

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

INVESTMENT ADVISERS ACT OF 1940
Release No. 2955/November 24, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13616

In the Matter of :
APPALACHIAN ASSET MANAGEMENT, INC. : ORDER MAKING FINDINGS
: AND IMPOSING SANCTION
: BY DEFAULT

SUMMARY

This Order revokes the investment adviser registration of Appalachian Asset Management, Inc. (Appalachian), which is controlled by Knox H. Fuqua (Fuqua). Fuqua was previously enjoined against violating the antifraud provisions of the federal securities laws based on his misappropriating client funds and other misconduct in his investment advisory business.

I. BACKGROUND

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) against Appalachian on September 15, 2009, pursuant to Section 203(e) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that Appalachian is a Commission-registered investment adviser controlled by Fuqua and that Fuqua has been enjoined against violating the antifraud provisions of the federal securities laws based on his misappropriating client funds and other misconduct in his investment advisory business. Appalachian was served with the OIP on October 29, 2009.¹ It failed to file an Answer, due twenty days after service of the OIP. See 17 C.F.R. § 201.220(b); OIP at 2. A respondent that fails to file an Answer to the OIP may be deemed to be in default, and the administrative law judge may determine the proceeding against him.² See 17 C.F.R. §§ 201.155(a), .220(f); OIP at 3. Thus, Appalachian is in default, and the undersigned finds the following allegations in the OIP are true.

¹ Appalachian was served with the OIP by USPS Express Mail attempted delivery at “the most recent business address shown on [its] registration form.” 17 C.F.R. § 201.141(a)(2)(iii).

² Appalachian was advised that, if it failed to file an Answer to the OIP within the time provided by law, the undersigned would enter an order revoking its registration as an investment adviser. See Appalachian Asset Mgmt., Inc., Admin. Proc. No. 3-13616 (A.L.J. Oct. 30, 2009) (unpublished).

II. FINDINGS OF FACT

Appalachian is a Commission-registered investment adviser created and controlled by Fuqua. Fuqua, of Charleston, West Virginia, is permanently enjoined from violating the antifraud provisions of the federal securities laws – Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act. SEC v. Fuqua, No. 2:06-cv-0666 (S.D. W.Va. Aug. 14, 2009). The wrongdoing that underlies the injunction occurred at another Commission-registered Fuqua investment adviser, KHF Advisors, LLC (KHF). Fuqua and KHF misappropriated client funds, materially misrepresented the nature and risk of investments made on behalf of clients, and invested client funds in a manner contrary to client instructions. Clients gave Fuqua and KHF discretionary authority over their money, with the caveat that the money not be invested in high risk investments. Instead of investing clients’ funds according to their instructions, Fuqua used the funds to pay business and personal expenses and to repay money misappropriated from other investors.

III. CONCLUSIONS OF LAW

Fuqua is a “person associated with [an] investment adviser” within the meaning of Section 203(e) of the Advisers Act and is permanently enjoined “from engaging in or continuing any conduct or practice in connection . . . with the purchase or sale of any security” within the meaning of Section 203(e)(4) of the Advisers Act and “has willfully violated [provisions] of the Securities Act of 1933, the Securities Exchange Act of 1934, [and the Advisers Act]” within the meaning of Section 203(e)(5) of the Advisers Act.

IV. SANCTION

Appalachian’s registration as an investment adviser will be revoked. This sanction will serve the public interest and the protection of investors, pursuant to Section 203(e) of the Advisers Act. It accords with Commission precedent and the sanction considerations set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff’d on other grounds, 450 U.S. 91 (1981). Fuqua’s unlawful conduct was an egregious breach of his fiduciary duties to advisory clients necessitating the revocation of the registration of any investment adviser controlled by him.

V. ORDER

IT IS ORDERED that, pursuant to Section 203(e) of the Investment Advisers Act of 1940, the investment adviser registration of APPALACHIAN ASSET MANAGEMENT, INC., IS REVOKED.

Carol Fox Foelak
Administrative Law Judge