

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 64073 / March 11, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14294

In the Matter of

KENNETH R. PAYNE,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934
AND NOTICE OF HEARING

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Kenneth R. Payne (“Respondent” or “Payne”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. From 1991 until August 2000, Payne, age 61 and a resident of the Seagoville Federal Correctional Institution in Seagoville, Texas, was the president and owner of now-defunct Heartland Financial Services, Inc. (“Heartland”), an unregistered entity that held itself out as a broker-dealer and insurance and estate-planning firm. Payne participated in the investment decisions for Heartland, including making recommendations to investors on their stock purchases through Heartland. Payne was also a registered representative of Jonathan Roberts Financial Group, Inc., a broker-dealer which was then registered with the Commission.

B. DISTRICT COURT PROCEEDINGS

2. On August 10, 2000, the Commission filed a Complaint in the United States District Court for the Southern District of Indiana (“Court”), captioned *Securities and Exchange Commission v. Payne, et al.*, Case No. 1:00-cv-01265, naming Payne, among others, as a defendant.

3. The Complaint alleged that Payne defrauded more than 300 investors in 13 states out of at least \$29.1 million. Payne was at all relevant times the president and owner of Heartland. Payne and others, acting primarily through Heartland, offered and sold numerous fraudulent investment opportunities to unsuspecting investors, including unit interests in JMS Investment Group, LLC (“JMS”), stock in a non-existent offshore bank located in Belize, and other securities promoted through Heartland. Rather than use investor funds for legitimate securities transactions, Payne and the other defendants commingled investors’ funds from all three schemes in a common bank account and used most of the money raised from investors to repay investors in the Ponzi scheme and for other non-investment related purposes. Payne engaged in his fraudulent activities through the defendant entities that operated as unregistered broker-dealers and knowingly provided substantial assistance to these unregistered broker-dealers. Payne caused investors to be sent false trade confirmations and monthly statements purporting to verify the nature and amount of their investments. The Complaint alleged that Payne violated Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 (“Securities Act”); Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder; and aided and abetted Heartland’s and JMS’ violations of Sections 15(a)(1) and 15(c)(1) of the Exchange Act, and Rule 15c1-2 promulgated thereunder.

4. On December 23, 2010, the Court entered summary judgment as to liability against Payne and in favor of the Commission as to the Commission’s claims that Payne violated the anti-fraud and registration provisions of the federal securities laws. In the ruling, the Court noted Payne was precluded from contesting his liability for violations of Section 17(a) of the Securities Act and Sections 10(b), 15(a)(1) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder, based on his prior conviction for the same conduct. The Court also found that the evidence was undisputed that Payne violated Section 5 of the Securities Act.

5. On February 18, 2011, the District Court entered an order permanently enjoining Payne from future violations of Sections 5(a), 5(c), 17(a) of the Securities Act, as well as Sections 10(b), 15(a)(1) and 15(c)(1) of the Exchange Act, and Rules 10b-5 and 15c1-2 promulgated thereunder. In granting the injunction, the Court found that Heartland was held out to be a broker-dealer and accepted money from investors. The Court found that most of the investors’ money was deposited into a non-interest bearing account and less than \$2 million of the more than \$28 million collected was used to purchase legitimate securities. The Court also found that Payne’s violations of the securities laws were egregious and that his fraudulent scheme victimized more than 330 investors in more than 13 states. The Court noted Payne’s principal role in the Ponzi scheme and that he engaged in the acts with a high degree of scienter. Citing Payne’s continued interest in the securities industry and the fact that Payne previously had his law license

revoked but continued to engage in unlawful conduct, the Court found that there is a reasonable likelihood Payne will commit future violations of the securities laws.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

For the Commission, by its Secretary, pursuant to delegated authority.

Elizabeth M. Murphy
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the *Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Notice of Hearing* ("Order"), on the Respondent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

Daniel J. Hayes, Esq.
Chicago Regional Office
Securities and Exchange Commission
175 West Jackson Blvd., 9th Floor
Chicago, IL 60604

Mr. Kenneth R. Payne
Register # 06422-028
FCI Seagoville
Federal Correctional Institution
P.O. Box 9000
Seagoville, TX 75159