

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

INVESTMENT ADVISERS ACT OF 1940
Release No. 3632/July 18, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15366

In the Matter of :
: ORDER MAKING FINDINGS AND
BRION G. RANDALL : IMPOSING SANCTIONS BY DEFAULT

SUMMARY

This Order bars Brion G. Randall (Randall) from the securities industry.¹

I. BACKGROUND

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on June 28, 2013, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that Randall was convicted of mail and bank fraud and enjoined against violations of the antifraud provisions of the federal securities laws. By letter dated July 9, 2013, Randall affirmatively declined to defend the proceeding. Accordingly, he has failed to defend the proceeding within the meaning of 17 C.F.R. § 201.155(a)(2). Therefore, Randall is in default, and the undersigned finds that the allegations in the OIP are true as to him. See OIP at 3; 17 C.F.R. §§ 201.155(a), .220(f).

II. FINDINGS OF FACT

Randall, of Texas, was previously a registered representative and state-registered investment adviser. He was convicted on October 25, 2010, of mail fraud in violation of 18 U.S.C. § 1341 and bank fraud in violation of 18 U.S.C. § 1344. United States v. Randall, No. 3:10-cr-00117-O (N.D. Tex. Oct. 25, 2010), aff'd, 440 F. App'x 283 (5th Cir. Sept. 1, 2011). He was sentenced to 180 months of imprisonment, followed by three years of supervised release, and ordered to pay restitution of \$5,526,343.64. He was also enjoined against violations of 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. Randall, No. 3:09-cv-1465-O (N.D. Tex. Oct. 5, 2009). Randall misused and misappropriated investor funds, falsely stated to investors that their funds were invested, sent out false account statements indicating that investors' funds were fully invested and earning returns, and otherwise engaged in a variety of conduct which operated as a fraud and deceit on investors. Randall defrauded at least twenty-seven investors and three banks from 2004 to 2009. United States v. Randall, 440 F. App'x at 285-86.

¹ In light of this Order, the Division of Enforcement's July 17, 2013, Motion to Convert Hearing to Prehearing Conference and Postpone Prehearing Conference is moot.

III. CONCLUSIONS OF LAW

Randall 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[n] . . . investment adviser” and “involves the violation of section 1341 . . . of title 18, United States Code” within the meaning of Sections 203(e)(2)(B), (D) and 203(f) of the Advisers Act.² Additionally, he has been enjoined “from engaging in or continuing any conduct or practice in connection with any such activity” as an investment adviser within the meaning of Sections 203(e)(4) and 203(f) of the Advisers Act.

IV. SANCTION

Randall will be barred from the securities industry. This sanction will serve the public interest and the protection of investors, pursuant to Section 203(f) of the Advisers Act, and accord with Commission precedent and the sanction considerations set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979). Randall’s unlawful conduct was recurring and egregious. It continued for several years and involved millions of dollars.

V. ORDER

IT IS ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-3(f), BRION G. RANDALL IS BARRED from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Carol Fox Foelak
Administrative Law Judge

² Although declining to defend the proceeding, Randall states that he was not a registered investment adviser at the time of his wrongdoing. However, the fact that he was an unregistered investment adviser does not moot this proceeding against him. The Commission has authority to bar registered or unregistered investment advisers from the securities industry or otherwise sanction them under Section 203 of the Advisers Act. Teicher v. SEC, 177 F.3d 1016, 1017-18 (D.C. Cir. 1999).