

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71399 / January 27, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15691

In the Matter of

JAMES A. RATHGEBER,

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 James A. Rathgeber (“Respondent” or “Rathgeber”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. From March 1994 to April 2008, Rathgeber was a registered representative associated with Joseph Stevens & Co., Inc., which at the time of his association was a broker-dealer registered with the Commission. Joseph Stevens & Co., Inc. ceased to be registered with the Commission as of August 2008. Rathgeber, age 50, is a resident of New York.

B. RESPONDENT’S CRIMINAL CONVICTION

2. On August 1, 2011, before the New York Supreme Court in People v. James Rathgeber, Case No. 02394-2009, Rathgeber pleaded guilty to six felony counts, including three counts of securities fraud in violation of General Business Law § 352-c(5), one count of grand larceny in the third degree in violation of New York Penal Law § 155.35, and two counts of grand larceny in the second degree in violation of New York Penal Law § 155.40(1). On December 2,

2011, Rathgeber was sentenced to five years of probation and ordered to pay \$279,056.05 in restitution.

3. The counts of securities fraud to which Rathgeber pleaded guilty alleged, among other things, that between January 2001 and December 2005, Rathgeber intentionally engaged in a scheme at Joseph Stevens & Co., Inc. with the intent to defraud at least ten persons by false and fraudulent pretenses, representations, and promises and so obtained property from at least one such person while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation, and purchase of securities. The counts of grand larceny to which Rathgeber pleaded guilty alleged, among other things, that between March 2003 and November 2005, Rathgeber stole money in excess of \$100,000 from a number of individuals.

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; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b)(6) 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.

By the Commission.

Elizabeth M. Murphy
Secretary