

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72258 / May 27, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15889

In the Matter of

ALBERT E. GILNER,

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 Albert E. Gilner (“Gilner” or “Respondent”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. From at least November 30, 2004 through at least January 2010, Gilner, though not registered with the Commission, acted as a broker with respect to the offer and sale of securities. Gilner was not registered as a broker-dealer or associated with a registered broker-dealer during the relevant time. Gilner, 77 years old, was a resident of New Smyrna Beach, Florida and is currently imprisoned in South Carolina.

B. RESPONDENT’S CRIMINAL CONVICTION

2. On June 19, 2013, a federal jury in the District of Massachusetts in Boston convicted Gilner of one count of conspiracy (18 U.S.C. § 371), three counts of wire fraud (18 U.S.C. § 1343), three counts of mail fraud (18 U.S.C. § 1341), and one count of money laundering (18 U.S.C. § 1957). U.S. v. Bochinski, et. al., Case No.: 1:10-cr-10199-DPW-2 (D. Mass. Jun. 23, 2010). Gilner was sentenced on October 18, 2013 to 84 months in prison with three years of supervised release and was ordered to make restitution in the amount of \$5.2 million, to be paid jointly and severally with another individual. Gilner is serving his sentence at a federal correctional institution in South Carolina.

3. As detailed in the trial transcript and indictment, from at least November 30, 2004 through at least January 2010, Gilner and another individual collectively induced at least 30 individuals nationwide to invest more than \$6 million in a series of purported high yield investment programs under various names, including the Old Navajo Foundation. Gilner falsely told investors that their funds would be held collectively in an escrow account as collateral for offshore foreign currency exchange trading or used to invest in communications-related business, timber, and gold, and to secure loans. The proceeds of the loans would purportedly be used for purposes such as trading in the stock of European and Asian banks and making loans to third world countries which would be guaranteed by the World Bank. Gilner promised investors returns of at least three to four percent per month, and assured them that their principal would be returned to them within a short amount of time. In reality, there were no such investment programs. Instead, Gilner misappropriated investor funds for personal use.

4. Gilner acted as an unregistered broker during the relevant period by selling securities in the form of investment contracts. Gilner solicited investors and recruited friends and acquaintances in the Old Navajo Foundation high yield investment program via telephone, e-mail, and in person. Gilner placed an advertisement containing information about the investment opportunity in an investment newsletter of nationwide distribution. Gilner labeled himself as a “facilitator” of the Old Navajo Foundation investment program, sometimes referring investors to the other individual for more information on the program. Gilner represented himself as a fellow investor in the investment program and told several investors that he was involved in other investment programs as well. Gilner made investment recommendations to at least one investor, telling that investor he would decide which of the programs he was involved with was the best fit for that investor. Gilner sometimes offered investors opportunities in other, purportedly higher yielding investment opportunities.

5. Gilner provided investors with forms to complete at the initiation of an investment, and collected completed forms from investors. He gave investors wire and bank deposit instructions so they could send funds to one of his two accounts. Gilner sent some investors fictitious account statements, confirmations, updates, and investment agreements he personally signed. Investors provided their funds to Gilner, with which he and the other individual purportedly purchased interests in the investments. Gilner collected investor checks personally. Gilner made some payments to investors, but the money came from other investors’ funds.

6. Gilner used investor funds to purchase two automobiles, fund his personal investment account, and for other personal expenditures.

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 Gilner an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent Gilner 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 Gilner 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 Gilner 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 Gilner 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.

Jill M. Peterson
Assistant Secretary