

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 51378/March 16, 2005

INVESTMENT ADVISERS ACT OF 1940
Release No. 2366/March 16, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-11787

In the Matter of	:	
	:	ORDER MAKING FINDINGS AND
MARK D. MONTANA	:	IMPOSING REMEDIAL SANCTIONS
	:	BY DEFAULT

The Securities and Exchange Commission (“Commission”) instituted this proceeding on January 5, 2005, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940. The Order Instituting Proceedings (“OIP”) alleges that a United States district court enjoined Mark D. Montana (“Montana”) from future violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, for his fraudulent activities while he was a licensed securities representative associated with Crown Capital Securities, Ltd., a registered broker-dealer and investment adviser. SEC v. Montana, Civil Action No. G-04-542 (S.D. Tex. Dec. 3, 2004).¹;

Montana was served with the OIP on January 28, 2005. I reach this conclusion based on: (1) the Division of Enforcement’s (“Division”) representation to my Office that it had located Montana in a different Texas correctional institution from the one listed on the service sheet and it would accomplish service; (2) a United States Post Office Domestic Return Receipt showing that Marie Willis, Mailroom Supervisor, Goodman Unit, Texas Department of Criminal Justice, Jasper, Texas, signed for a letter sent to Montana by the Division; (3) a page from a mail room log showing Montana’s signature for mail on January 28, 2005; and (4) an affidavit from Marie Willis that Montana received a certified letter and attached documents from the Division on January 28, 2005. As of the date of this Order, Montana, who is pro se, has not filed an answer to the allegations in the OIP.

¹ The Final Judgment was signed on December 2, but entered on December 3, 2004.

On March 2, 2005, the Division filed a Motion for Default Judgment as to Respondent Mark D. Montana that includes: Exhibit 1, the Complaint filed September 9, 2004, in SEC v. Montana, Civil Action No. G-04-542 (S.D. Tex. Sept. 9, 2004); Exhibit 2, the Final Judgment in SEC v. Montana, Civil Action No. G-04-542 (S.D. Tex. Dec. 3, 2004); Exhibit 3, United States Post Office documents showing mail sent to Montana by the Division in care of the Texas Department of Criminal Justice, Institutional Division, Goodman Unit, Jasper, Texas, and receipt by Marie Willis; and Exhibit 4, an affidavit by Marie Willis executed and dated on January 28, 2005. I accept these exhibits into evidence. 17 C.F.R. § 201.111.

Montana is in default because he has not filed an answer and has not responded to a dispositive motion.² 17 C.F.R. § 201.155. Based on the default and the evidence of record, I find the following allegations in the OIP to be true.

Montana, age thirty-eight, currently holds Series 7 and Series 63 securities licenses. From August 1999 through August 2004, Montana controlled M & M Financial, Inc. (“M & M Financial”), a Delaware corporation with its principal place of business in Lake Jackson, Texas, where Montana resided before his incarceration.³ During this same time period, Montana was a registered representative and an associated person with Crown Capital Securities, Ltd., a broker-dealer and investment adviser registered with the Commission.

On December 3, 2004, a final judgment by default was entered against Montana individually, and doing business as M & M Properties, and M & M Financial, permanently enjoining each from future violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5. SEC v. Montana, Civil Action No. G-04-542 (S.D. Tex. Dec. 3, 2004).

The Complaint in the civil action alleged that beginning in 1999, Montana convinced approximately three hundred persons to invest funds with M & M Financial and that Montana proceeded to defraud those investors by: (1) falsely promising investors that M & M Financial would purchase at a discount with investors’ pooled funds, large blocks of securities that he would select using his purported vast securities industry expertise; (2) promising investors, without any reasonable basis, an annual return of up to fifteen percent; (3) falsely assuring investors that their funds would remain safe, and claiming that their moneys were insured by the Securities Investor Protection Corporation; and (4) preparing and mailing to investors on a monthly or quarterly basis, as evidence of the purported success and safety of the investments, “account statements,” which purportedly reflected the composition and value of their investments, and furnishing some investors with automatic principal withdrawals.

² In my judgment, there is no need for a show cause order because Montana neither answered the complaint nor otherwise appeared to defend in the underlying civil action, and has not answered the OIP or the Motion for Default Judgment in this administrative proceeding. See Final Judgment, SEC v. Montana, Civil Action No. G-04-542 (S.D. Tex. Dec. 3, 2004).

³ In a January 24, 2005, e-mail sent to the Office of the Secretary, the Division represented that Montana was convicted of criminally negligent homicide and sentenced to six years in the Texas penitentiary.

Based on these findings, I find it in the public interest to bar Montana from association with any broker, dealer, or investment adviser.

Order

Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, I ORDER that Mark D. Montana is barred from association with any broker, dealer, or investment adviser.

Brenda P. Murray
Chief Administrative Law Judge