

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
July 5, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-11972

In the Matter of

PHILIP A. LEHMAN,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940
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”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Philip A. Lehman (“Respondent” or “Lehman”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Lehman is 65 years old and a resident of Englewood, Ohio. From 1984 until September 2000, Lehman was the sole shareholder and president of Tower Equities, Inc. (“Tower Equities”), a broker-dealer and investment adviser registered with the Commission and located in Dayton, Ohio. Lehman was also associated with Tower Equities from June 2001 until August 2002. Tower Equities is now known as Sicom Securities, Inc.

2. On September 22, 1999, the Commission instituted administrative and cease-and-desist proceedings against Lehman and Tower Equities for raising \$10.1 million from Tower Equities’ investment advisory clients in connection with two fraudulent schemes.

3. On September 7, 2000, in *In the Matter of Philip A. Lehman and Tower Equities, Inc.*, A.P. File No. 3-10024 (September 7, 2000), the Commission ordered Lehman to

cease and desist from future violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, suspended him for nine months from association with any broker, dealer, investment adviser or investment company, and ordered him to pay a civil penalty of \$10,000. Lehman consented to the order without admitting or denying its findings.

B. OTHER RELEVANT ENTITIES

4. Ashar Endeavor I, LLC (“Ashar”) was an Ohio limited liability company organized in or about May 1999 with its principal place of business in Dayton, Ohio. Ashar was dissolved in or about October 2002.

5. Oberland Endeavor I, LLC (“Oberland”) is an Ohio limited liability company organized in or about July 2000 with its principal place of business in Dayton, Ohio.

C. FRAUDULENT OFFERING OF INVESTMENT CONTRACTS

Summary

6. From about April 1999 to at least August 2000, Lehman engaged in a fraudulent prime bank-type scheme in which he offered and sold \$10 million in securities to 26 investors. The securities were investment contracts in Ashar and its successor, Oberland. When selling the securities, Lehman falsely represented to the investors that Ashar and then Oberland would enter into a "reserved funds transaction" or similar transaction that could earn returns as high as 200 percent in as little as 60 days with no risk of loss to principal. In fact, such transactions did not, and could not, exist.

Solicitation of Investors

7. In or about April 1999, Lehman began soliciting investors for Ashar while he was under investigation by the Division of Enforcement for the Tower Equities fraudulent schemes that led to the previous proceedings against him.

8. Lehman told potential investors that opportunities existed to earn a high rate of return in a short period of time with no risk to principal if he could raise enough money to seek out and engage in these opportunities. When Lehman explained to potential investors how the opportunities would generate a return, he used vague terms consistent with prime bank schemes, such as "Federal Reserve Notes" or "high leveraged loans."

9. Lehman ultimately raised approximately \$10 million from at least 26 investors.

False Representations in Ashar’s Offering Materials

10. In or about May 1999, Lehman created an operating agreement, preformation agreement and other documents for Ashar (“Ashar offering materials”). Lehman gave potential investors a copy of the Ashar offering materials.

11. The operating agreement stated that Ashar would have both "common members" and "preferred members." The preferred members were defined as individuals who invested funds in Ashar through various limited liability companies. All of Ashar's funds were to be provided by the preferred members. Each preferred membership share was priced at \$100,000. The common members were defined as limited liability companies owned or controlled by Lehman and several of his business associates.

12. The Ashar operating agreement stated, among other things, that:

- a. [Ashar will] acquire and maintain unencumbered cash reserves in the sum of at least Ten Million Dollars (\$10,000,000) derived from capital contributions . . . of Preferred Members. Said cash reserves shall be deposited and held unencumbered in a bank trust account, hereinafter referred to as the "Reserved Fund Account."
- b. "Maximum Return" is defined as the maximum amount of money that a Preferred Member is entitled to receive from the income of the Company derived from each specific transaction of the Company and is based on said Preferred Member's capital contribution to the Company. . . . At such time as the accumulated amounts of Maximum Return paid to a Preferred Member equals twice the principal amount of capital investment and deposited in the Reserved Funds Account by said preferred member (i.e., double his capital investment), . . . then, in that event, the Preferred Shares of such Member are automatically redeemed and cancelled and his preferred membership terminated.

13. A document attached to the Ashar operating agreement, known as the preformation agreement, stated that Ashar "shall utilize its best efforts to seek and negotiate a Reserved Funds Transaction The [Reserved Funds Transaction] shall provide for the generation of income sufficient to enable the Company to pay to the Preferred Members within sixty (60) days of execution of the Transaction contract a Maximum Return equal to the Maximum Aggregate Return, or in other words, an amount equal to two (2) times the capital investment of the Preferred Members."

False Ashar Status Reports

14. Beginning in or about August 1999, Lehman caused Ashar to issue status reports approximately twice each month to the investors regarding Ashar's efforts to invest their funds.

15. Most of the status reports claimed that Ashar was close to completing a transaction with investors' funds. On several occasions, investors received a report stating that a transaction was imminent. However, the subsequent status reports always informed investors that the transaction could not be completed.

16. Ashar never consummated a transaction.

False Representations in Oberland Offering Materials

17. In or about July 2000, Lehman created an operating agreement and other documents for Oberland with terms similar to the operating agreement for Ashar (“Oberland offering materials”). The Oberland operating agreement, which Lehman executed on July 6, 2000, stated that the company would engage in transactions and that preferred members would receive a "maximum return" of three times their principal investment, but that the preferred members would receive 80 percent of all income from any transaction and the common members would receive 20 percent.

18. Lehman gave copies of the Oberland offering materials to the Ashar investors.

19. Ashar’s investors, based on Lehman’s representations that, among other things, Ashar’s confidential banking information had become so widely known as to be compromised, decided to dissolve Ashar and to roll over their investments into Oberland. For example, one investor signed a written consent on August 8, 2000. On or about August 25, 2000 Lehman transferred investor funds to a new bank account for Oberland that he controlled.

Misrepresentations and Omissions

20. Lehman falsely represented to investors in Ashar and Oberland that they could earn extraordinarily high rates of return in a short period of time with no risk to principal. In fact, the transactions did not exist as described by Lehman.

21. For example, Lehman falsely represented to at least one investor that he could expect to earn at least 100 percent from Ashar and 200 percent from Oberland within a short time period by investing in a reserved funds transaction, which could include, among other things, investments in medium-term notes (“MTN’s”). In fact, such large returns from investing in MTN’s are economically impossible.

22. Lehman also falsely represented in the Ashar and Oberland offering materials that it was possible to engage in a reserved funds transaction or a similar transaction that would double or triple an investor’s principal within about 60 days with no risk to principal. In fact:

- a. the proposed "reserved funds transactions" were impossible to ever consummate because they did not exist;
- b. the extraordinarily high rates of return quoted by Lehman in the offering materials, with no risk to principal, were economically impossible to achieve under any scenario; and
- c. Lehman failed to perform any due diligence to determine if the proposed transactions were economically possible.

23. Lehman also caused Ashar and Oberland status reports to be issued even though he had no reasonable basis for their representations that investment transactions were imminent. Lehman conducted little, if any, due diligence to determine

the basis for their representations or whether the alleged transactions could ever be consummated.

24. Lehman persuaded at least one investor not to withdraw his funds from Oberland when he falsely represented that a transaction was near completion.

25. Oberland never consummated a transaction.

Investors' Funds Were Placed At Risk

26. In May 2002, Lehman requested that Huntington National Bank ("Huntington Bank"), located in Columbus, Ohio, sign a "Purchase Commitment" to facilitate a potential wire transfer of \$10 million from Oberland's account at Huntington Bank to an unspecified European bank.

27. Huntington Bank declined to sign the "Purchase Commitment" and closed the Oberland account. Lehman then transferred investor funds into an account at Key Bank, N.A. ("Key Bank") in Dayton, Ohio.

28. In or about August, 2002, Lehman requested Key Bank to wire transfer \$10 million in Oberland's account at Key Bank to an unspecified bank in Switzerland. Key Bank declined to transfer the funds.

Seizure of Funds by the Federal Bureau of Investigation

29. On August 20, 2002, The Federal Bureau of Investigation ("FBI") obtained a seizure warrant issued by the United States District Court for the Southern District of Ohio. The court issued the warrant because it found probable cause to believe the funds were proceeds traceable to a transaction or attempted transaction in violation of federal statutes prohibiting wire fraud, mail fraud and interstate transportation of property acquired by fraud.

30. On August 21, 2002, a Special Agent for the FBI executed the seizure warrant on the \$10 million of funds raised from the Oberland investors that were on deposit at Key Bank.

31. On October 17, 2002, in *United States v. Contents of Key Bank, N.A. Account Number 353901001365*, No. C-3-02-481 (S.D. Ohio, October 17, 2002), the U.S. Attorney for the Southern District of Ohio ("U.S. Attorney"), pursuant to the civil forfeiture provisions of 18 U.S.C. § 981, filed a complaint for civil forfeiture against the Oberland account at Key Bank.

32. The U.S. Attorney alleged in the complaint that the funds in the Key Bank account constituted proceeds traceable to violations of the federal mail fraud and wire fraud statutes.

33. In settlement of the U.S. Attorney's complaint described above, all of the funds in Oberland were returned to the investors.

D. VIOLATIONS

34. As a result of the conduct described above, Lehman willfully violated Section 17(a) of the Securities Act in that he, by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, in the offer or sale of securities, employed devices, schemes or artifices to defraud; obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers or prospective purchasers of such securities. As a part of this conduct, from about April 1999 to at least August 2000, Lehman falsely represented to investors in Ashar and Oberland that, through fictitious transactions, they could earn high rates of return in a short period of time with no risk to principal.

35. As a result of the conduct described above, Lehman willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in that he, in connection with the purchase or sale of securities, directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or of the mails, employed devices, schemes or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon investors in Ashar and Oberland. As a part of this conduct, from about April 1999 to at least August 2000, Lehman falsely represented to investors in Ashar and Oberland that, through fictitious transactions, they could earn high rates of return in a short period of time with no risk to principal.

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 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 and Section 203(f) of the Advisers Act including, but not limited to, civil penalties pursuant to Section 21B of the Exchange Act and Section 203(i) of the Advisers 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 300 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.

Jonathan G. Katz
Secretary