INITIAL DECISION RELEASE NO. 408
ADMINISTRATIVE PROCEEDING
FILE NO. 3-13908

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

In the Matter of	:	
	:	
SHERWIN BROWN and	:	INITIAL DECISION
JAMERICA FINANCIAL, INC.	:	November 29, 2010

APPEARANCES: James G. Lundy and Robin Andrews for the Division of Enforcement, Securities and Exchange Commission

Respondent Sherwin Brown pro se and for Respondent Jamerica Financial, Inc.

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Sherwin Brown (Brown) and Jamerica Financial, Inc. (Jamerica) (jointly, Respondents), from association with any investment adviser and revokes Jamerica's registration as an investment adviser. They were previously enjoined from violating the antifraud provisions of the securities laws, based on wrongdoing from 2004 to 2006 in connection with their diversion of funds raised from investors that were supposed to be used for investment purposes.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) against Respondents on May 21, 2010, pursuant to Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that Brown is the president and majority owner of Jamerica, a Commission-registered investment adviser, and that both were enjoined in 2010 from violating the antifraud and recordkeeping provisions of the

federal securities laws. Brown filed an Answer to the OIP on June 11, 2010.[1] Pursuant to the schedule set at the June 21, 2010, prehearing conference, the Division of Enforcement (Division) filed a Motion for Summary Disposition on July 29, 2010. Respondents filed an opposition on September 20, 2010, and the Division filed a reply on October 1, 2010.[2] The administrative law judge is required by 17 C.F.R. § 201.250(b) to act "promptly" on a motion for summary disposition.

This Initial Decision is based on (1) the Division's Motion for Summary Disposition and reply pleading; (2) Respondents' opposition; and (3) Respondents' June 11, 2010, Answer. There is no genuine issue with regard to any fact that is material to this proceeding. All material facts that concern the activities for which Respondents were enjoined were decided against them in the civil case on which this proceeding is based. Any other facts in their pleadings have been taken as true, pursuant to 17 C.F.R. § 201.250(a). All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

B. Allegations and Arguments of the Parties

The OIP alleges that Jamerica, a Commission-registered investment adviser, and Brown, its owner, were enjoined in April 2010 from violating the antifraud provisions of the federal securities laws, in the civil action entitled SEC v. Brown, NO. 06-cv-1213 (JRT/FLN) (D. Minn. May 3, 2010) (SEC v. Brown). The Division urges that he be barred from association with any investment adviser. Brown argues that there were missteps and misconduct in SEC v. Brown and that he has been the subject of selective prosecution, based on race.[3] He urges that the proceeding be dismissed.

[1] The Answer, titled "Notice of Motion to Request Continuance of 90 Days Until Legal Representation is Retained and Briefed," includes two attachments; the first is an eight-page document titled "The Real Truth About Sherwin Brown and Jamerica Financial, Inc.," that contains many pages of statements responding to the allegations in the OIP (Resp. Ex. 1); and the second is a copy of the Motion to Stay Pending Appeal in SEC v. Brown (Resp. Ex. 2).

[2] Leave to file the Motion for Summary Disposition was granted at the prehearing conference, pursuant to 17 C.F.R. § 201.250(a).

[3] Selective prosecution refers to criminal prosecution of a defendant based on an impermissible motive, such as race, when others similarly situated of a different race were not prosecuted. See United States v. Armstrong, 517 U.S. 456 (1996). A selective prosecution claim is not a defense on the merits to the criminal charge itself, but an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution. Id.

C. Procedural Issues

1. Exhibits Admitted into Evidence

The following items, of which official notice is taken pursuant to 17 C.F.R. §§ 201.250(a), .323, in the Division's Motion for Summary Disposition at Exhibits 1-10, are admitted into evidence as Division Exhibits 1-10:

March 29, 2006, Complaint in SEC v. Brown (Div. Ex. 1);

November 16, 2007, Plaintiff's Memorandum of Law in Support of Its Motion for Summary Judgment in SEC v. Brown (Div. Ex. 2);

January 30, 2008, Defendants' Memorandum in Opposition to Plaintiff's Motion for Summary Judgment in SEC v. Brown (Div. Ex. 3);

June 13, 2008, Report and Recommendation of U.S. Magistrate Judge Franklin L. Noel in SEC v. Brown (Div. Ex. 4);

July 1, 2008, Memorandum in Support of Defendants' Objections to June 13, 2008 Report and Recommendation in SEC v. Brown (Div. Ex. 5);

September 30, 2008, Order Adopting Report and Recommendation in SEC v. Brown (Div. Ex. 6);

January 6, 2010, Notice of Objection to December 7, 2009, Reports and Recommendations of U.S. Magistrate Judge in SEC v. Brown (Div. Ex. 7);

April 30, 2010, Order Adopting Reports and Recommendations of the Magistrate Judge in SEC v. Brown (Div. Ex. 8);

May 3, 2010, Judgment in SEC v. Brown (Div. Ex. 9); and

June 15, 2010, Order Denying Motion to Stay Pending Appeal in SEC v. Brown (Div. Ex. 10).

The following items, attached to Respondents' Answer and Opposition, are admitted as Respondent Exhibits 1-3:

Eight-page document titled "The Real Truth About Sherwin Brown and Jamerica Financial, Inc." (Resp. Ex. 1);

Motion to Stay Pending Appeal in SEC v. Brown (Resp. Ex. 2); and

Five-page print-out of e-mail string between Robert M. Moye, Commission Senior Trial Counsel, and Brown, dated between October 23 and 27, 2009, concerning Brown's discovery demand in SEC v. Brown (Resp. Ex. 3).

2. Collateral Estoppel

The Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent. See James E. Franklin, 91 SEC Docket 2708, 2713 & n.13 (Oct. 12, 2007); John Francis D'Acquisto, 53 S.E.C. 440, 444 & n.9 (1998); Demitrios Julius Shiva, 52 S.E.C. 1247, 1249 & nn.6-7 (1997). Nor does the pendency of an appeal preclude the Commission from action based on an injunction. See Franklin, 91 SEC Docket at 2714 n.15.

II. FINDINGS OF FACT

Jamerica is a Commission-registered investment adviser. Div. Ex. 6 at 1. Brown is its president and 50% owner. Div. Ex. 6 at 2. A resident of St. Paul, Minnesota, during the time at issue, Brown now resides in Florida. Answer at 1; Div. Ex. 6 at 2. Brown and Jamerica were (and are) permanently enjoined from violating the antifraud provisions of the federal securities laws – 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, as well as from violating the recordkeeping provisions of the Advisers Act – Section 204 and Rule 204-2 thereunder. Div. Ex. 8 at 5-8, Div. Ex. 9 at 2. Additional sanctions included civil penalties of $80,000 (Brown) and $400,000 (Jamerica) and disgorgement, for which Respondents are jointly and severally liable, of $869,633 plus prejudgment interest of $226,380.77. Div. Ex. 8 at 8-10, Div. Ex. 9 at 2-3. Official notice pursuant to 17 C.F.R. §§ 201.250(a), .323 is taken of Brown's pending appeal of the judgment to the United States Court of Appeals for the Eighth Circuit, No. 10-2479.

Brown grew up in dire poverty in Jamaica. Resp. Ex. 1 at 4, Opposition at 1. After arriving in the United States in 1982, he commenced a life of unrelenting work, for example, working two jobs while attending school at the same time. Id. Brown became a U.S. citizen in 1988. Opposition at 2. Brown entered the securities business in 1988. Resp. Ex. 1 at 1. While in the securities business, he met quarterly with each client to review the client's situation. Resp. Ex. 1 at 2, Opposition at 3. Many clients have been satisfied with his services. Answer at 2, Opposition at 2, 5. He desires to continue his chosen career in the securities business. Answer at 2, Resp. Ex. 1 at 8, Opposition, passim.

Poor legal advice and running out of funds hampered the defense of SEC v. Brown. Resp. Ex. 1 at 5, Opposition at 2. Brown considers that Commission staff used "dirty tricks" in its prosecution of SEC v. Brown to drive him out of business. Answer at 2, Resp. Ex. 1 at 5-7. Brown considers that Commission staff withheld exculpatory evidence in SEC v. Brown.

Answer at 2, Opposition at 2, Resp. Ex. 3. Brown considers this proceeding against him as a black small business owner, with few financial resources, to be the equivalent of lynching. Answer at 1, 4.

The wrongdoing that underlies Respondents' injunctions commenced in 2004. Div. Ex. 6 at 2. Brown organized Brawta Ventures, LLC (Brawta), a purported private investment firm. Id. Between May 2004 and January 2006, approximately fifty-three investors invested a total of approximately $1.62 million in Brawta. Div. Ex. 6 at 3. Brown was solely responsible for selecting Brawta's investments, and Brown had sole signature authority over the Brawta bank account. Id. A total of $869,633 was transferred out of the Brawta checking account for non-investment purposes, including payments to a lawn care service, electronics stores, and computer stores and repayments of a personal loan owed by Brown. Div. Ex. 6 at 3-5, 14. The use of investor funds for these types of payments rather than for investments was not disclosed to the investors. Div. Ex. 6 at 2-3, 5, 14. In repaying the personal loan with a Brawta check in the amount of $22,500, Brown suggested to the creditor that, if asked about the payment, he state, falsely, that it was for providing investment advice.[4] Div. Ex. 6 at 4-5. The Commission began an investigation of Jamerica in February 2006 and found that its records were incomplete and contained false entries. Div. Ex. 6 at 5.

III. CONCLUSIONS OF LAW

Respondents have been permanently enjoined "from engaging in or continuing any conduct or practice in connection with [acting as an investment adviser] or in connection with the purchase or sale of any security" within the meaning of Sections 203(e)(4) and 203(f) of the Advisers Act. Further, their misconduct underlying the injunctive action occurred while Jamerica was an investment adviser and Brown was associated with Jamerica. They are precluded from relitigating in this proceeding the district court's findings of fact or conclusions of law. Michael Batterman, 84 SEC Docket 1349, 1356 & n.18 (Dec. 3, 2004); Robert Sayegh, 54 S.E.C. 46, 51 (1999); D'Acquisto, 53 S.E.C. at 444. Likewise, the court's procedural rulings cannot be relitigated in this proceeding. Vladislav Steven Zubkis, 86 SEC Docket 2618, 2623 & n.19 (Dec. 2, 2005), recon. denied, 87 SEC Docket 2584 (Apr. 13, 2006).

Further, the issues in the OIP in this proceeding concern Respondents, not the Commission, and thus Brown's allegation of misconduct by Commission staff in SEC v. Brown is not relevant to the issues in this proceeding. Any challenge to the propriety of the staff's conduct should have been brought before the court in which that case was heard. Harold F. Crews, 87 SEC Docket 350, 359 (Jan. 13, 2006). In sum, Respondents' only means of challenging the validity of the injunction against them is through an appeal to the Court of

[4] Brown disputes the court's findings, stating that Brawta clients agreed to payments and that there is no proof that Brawta funds were not properly invested. Opposition at 3. However, as noted above, the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent.

Appeals for the Eighth Circuit, which they are pursuing. Zubkis, 86 SEC Docket at 2623.

Finally, the pendency of the appeal in SEC v. Brown does not preclude "follow-on" action based on the injunction. Joseph P. Galluzzi, 55 S.E.C. 1110, 1116 n.21 (2002); D'Acquisto, 53 S.E.C. at 444 n.9. If the Court of Appeals vacates the injunction on which this proceeding is based, the Commission will entertain an application to reconsider the sanction herein. C. R. Richmond & Co., 46 S.E.C. 412, 414 n.11 (1976). Concerning Brown's belief that Commission staff singled him out as a black small businessman when it initiated this follow-on administrative proceeding, it is noted that, year to date, five of fifteen Initial Decisions were in follow-on proceedings in which small businessmen who were registrants, associated persons or CPAs were barred from association with any broker, dealer, and/or investment adviser or disqualified from appearing before the Commission, and Default Orders have been entered against such persons in sixteen cases.[5]

IV. SANCTIONS

The Division requests investment adviser bars. As discussed below, Respondents will be barred and Jamerica's registration as an investment adviser will be revoked.[6]

A. Sanction Considerations

The Commission determines sanctions pursuant to a public interest standard. See Section 203(e) and (f) of the Advisers Act. The Commission considers factors including:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). The Commission also considers the age of the violation and the degree of

[5] See http://www.sec.gov/alj/aljdec.shtml (links to Initial Decisions) and http://www.sec.gov/alj/aljorders.shtml (links to Default Orders).

[6] Jamerica is a "person" within the meaning of the Advisers Act, and thus may be "barred from being associated with an investment adviser" as well as being subject to revocation of its registration as an investment adviser. See Sections 202(16), 203(e), and 203(f) of the Advisers Act. See also Ahmed Mohamed Soliman, 52 S.E.C. 227, 231 (1995) (Commission both revoked respondent's investment adviser registration and barred him from association with a broker-dealer or investment adviser based on his conviction for submitting fraudulent documents to the Internal Revenue Service).

harm to investors and the marketplace resulting from the violation. Marshall E. Melton, 56 S.E.C. 695, 698 (2003). Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. Schield Mgmt. Co., 87 SEC Docket 848, 862 & n.46 (Jan. 31, 2006).

In proceedings based on an injunction, the Commission examines the facts and circumstances underlying the injunction in determining the public interest. Melton, 56 S.E.C. at 698. "An injunction, by its very nature, is predicated on conduct that . . . violate[s] laws, rules or regulations." Id. at 709. The Commission considers an antifraud injunction to be particularly serious. Id. at 709-10. The public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business. Richard C. Spangler, Inc., 46 S.E.C. 238, 252 (1976).

B. Sanctions

Respondents' conduct was egregious and recurrent. It continued for two years, and ended only when the Commission investigated and sued them. A high degree of scienter is indicated by their antifraud violations of Section 17(a) of the 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. Consistent with their vigorous defense in SEC v. Brown and in this administrative proceeding, Respondents have not articulated recognition of the wrongful nature of their conduct. Brown has worked for more than twenty years in the securities industry and desires to continue this work. Thus, his occupation will present opportunities for future violations. Consistent with Respondents' vigorous defense, Brown limited his assurances against future violations to stating his belief that Commission staff will be watching him closely.

While Brown has had satisfied clients, the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally, as the Commission has often emphasized. See Christopher A. Lowry, 55 S.E.C. 1133, 1145 (2002), aff'd, 340 F.3d 501 (2003); Arthur Lipper Corp., 46 S.E.C. 78, 100 (1975).

Respondents' violations are recent, ending only in 2006. The degree of harm to investors in Brawta is quantified in Respondents' ill-gotten gains of $869,333 that the court ordered them to disgorge.

V. ORDER

IT IS ORDERED that, pursuant to Section 203(e) of the Investment Advisers Act of 1940, the registration of JAMERICA FINANCIAL, INC., as an investment adviser IS REVOKED.

IT IS FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, JAMERICA FINANCIAL, INC., and SHERWIN BROWN ARE BARRED from associating with any investment adviser.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Carol Fox Foelak
Administrative Law Judge