

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 2622 / July 26, 2007

Admin. Proc. File No. 3-12171

In the Matter of	:	
	:	CORRECTED
	:	
TERRY HARRIS	:	
	:	

ORDER DISMISSING PROCEEDING

I.

Terry Harris appeals from the decision of an administrative law judge. 1/ After both Harris and the Division of Enforcement (the “Division”) filed Motions for Summary Disposition, the law judge granted the Division’s Motion for Summary Disposition and, pursuant to Section 203(f) of the Investment Advisers Act of 1940, 2/ barred Harris from association with any registered or unregistered investment adviser.

Harris is, and was during all relevant times, the president, director, and owner of at least a seventy-five percent interest in N2K Trading Academy, Inc. (“N2K”). On December 21, 2005, N2K filed a Form ADV with the Commission, seeking registration as an investment adviser. In response to questions concerning the background of firm principals, N2K’s Form ADV stated that Harris had been the subject of state disciplinary action in Alabama and Illinois. Advisers Act Section 203(f), as relevant here, authorizes the Commission to determine whether a sanction, including a bar, is in the public interest based on findings that an individual has been convicted of certain crimes, or is subject to a final order of a state securities commission that bars the individual from engaging in the business of securities or that is based on violations of a law that

1/ Terry Harris, Initial Decision Rel. No. 311, 87 SEC Docket 3251 (May 11, 2006).

2/ 15 U.S.C. § 80b-3(f).

prohibits fraud. ^{3/} Accordingly, the Commission instituted this proceeding to determine whether it was in the public interest to impose a federal sanction on Harris based on the state disciplinary actions against him.

II.

The Order Instituting Proceedings (“OIP”) alleged three state disciplinary actions as bases for a proceeding under Advisers Act Section 203(f): (1) Harris’s January 2005 state criminal conviction in Alabama, which was based on Harris’s guilty plea for his failure to register properly as an investment adviser under Alabama law (the “Alabama Conviction”); ^{4/} (2) an August 2004 order issued by the Illinois Secretary of State that directed Harris to cease and desist from the offer or sale of securities in Illinois after finding that Harris had sold unregistered securities in Illinois (the “Illinois Order”); and (3) a June 2003 cease and desist order issued by the Alabama Securities Commission (“ASC”), which found that Harris had committed fraud ^{5/} and had collected funds from investors for the purpose of investing with an expectation of receiving a profit without benefit of registration (the “Alabama Order”). ^{6/}

In determining that the Commission could impose a sanction on Harris under Advisers Act Section 203(f), the law judge relied solely on the Alabama Conviction. With respect to the Illinois Order, the law judge stated, “It could be argued that Illinois did not ‘bar [Harris] from engaging in the business of securities’ within the meaning of Advisers Act Section 203(e)(9) because he was not prohibited from engaging in investment adviser activities in the securities business.” Because the Alabama Conviction provided a basis for the Commission’s proceeding under Advisers Act Section 203(f), the law judge did not resolve the question of whether the Illinois Order provided an additional basis. She did, however, take the Illinois Order “into account in determining the sanction.” With respect to the Alabama Order, before the law judge, Harris challenged whether the Alabama Order was final, as required by Advisers Act Section 203(f). The law judge had some evidence on the issue of finality but, in “view of the parties’ divergence on this issue,” made no findings as to the Alabama Order and did not rely on it in making her determination to bar Harris.

^{3/} These bases for the imposition of a sanction are found in Advisers Act Section 203(e)(9), 15 U.S.C. § 80b-3(e)(9), which Advisers Act Section 203(f), 15 U.S.C. § 80b-3(f), incorporates by reference.

^{4/} See Ala. Code § 8-6-3(b).

^{5/} See Ala. Code § 8-6-17(a)(1), (2), and (3)

^{6/} See Ala. Code § 8-6-3(a).

III.

On March 26, 2007, the Division of Enforcement filed a Motion to Supplement the Record before the Commission (the “Division’s Motion to Supplement”). Attached to the Division’s Motion to Supplement was a March 23, 2007, opinion of the Alabama Court of Criminal Appeals reversing Harris’s conviction and remanding it to the trial court on the basis of ineffective assistance of counsel. ^{7/} Because it has been reversed, the Alabama Conviction may no longer serve as the basis for Commission sanctions under Advisers Act Section 203(f). ^{8/}

The Division of Enforcement did not appeal the law judge’s determination to limit her reliance on the Illinois Order to the assessment of sanctions. Under Commission Rule of Practice 411(c), ^{9/} the Commission may, on its own initiative, order review of any portion of any initial decision not before the Commission on appeal, within twenty-one days after the end of the period established for filing a petition for review. The Commission did not order review of this determination by the law judge during the specified period. Accordingly, the issue of whether the Illinois Order provides a basis for proceeding against Harris under Advisers Act Section 203(f) is not before us.

Neither party addressed the finality of the Alabama Order in their briefs on appeal to the Commission, and the Division did not appeal the law judge’s determination to make no findings as to the Alabama Order. Because of the limited evidence on the question of the finality of the Alabama Order and its potential importance, the Commission, pursuant to Rule of Practice 411(c), issued an Order Directing the Filing of Additional Briefs from the parties on the question of the finality of the Alabama Order and, if final, its impact on the sanctions to be imposed on Harris.

The parties responded with additional materials and arguments. We have reviewed the materials and arguments submitted by the parties, and we do not believe that they establish with sufficient weight whether the Alabama Order is final. Since, on this record, the finality of the Alabama Order is in question, it cannot serve as a basis for proceeding against Harris under Advisers Act Section 203(f).

^{7/} Harris v. State, __ So.2d __, 2007 WL 866214 (Ala. Crim. App. 2007).

^{8/} We note that the Alabama Court of Criminal Appeals, in its decision reversing the Alabama Conviction, remanded the proceeding to the trial court for a new trial. If, on remand, Harris is convicted of a criminal violation set forth in Advisers Act Section 203(e)(9), that could provide a basis for a new proceeding to determine whether it is in the public interest to impose a sanction on Harris.

^{9/} 17 C.F.R. § 201.411(c).

IV.

For the reasons discussed above, none of the three bases for proceeding under Advisers Act Section 203(f) that were alleged in the OIP remains valid on the record before us on appeal.

Accordingly, it is ORDERED that this proceeding be, and it hereby is, dismissed.

By the Commission.

Nancy M. Morris
Secretary