ADMINISTRATIVE PROCEEDING
FILE NO. 3-7651

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	)
BRUCE L. NEWBERG	)

INITIAL DECISION

Washington, D.C.
September 1, 1993

Brenda P. Murray
Administrative Law Judge

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APPEARANCES: Leo F. Orenstein and Jeffrey P. Weiss for the Division of Enforcement, Securities and Exchange Commission.

Sheldon M. Jaffe for Bruce L. Newberg

BEFORE: Brenda P. Murray, Administrative Law Judge

The Securities and Exchange Commission (Commission) initiated this administrative proceeding on January 29, 1992, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 (Exchange Act). The basis for the proceeding is Respondent's criminal conviction for violating Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5.

In 1989 Mr. Newberg and five other individuals were convicted following a jury trial of committing tax fraud, securities fraud, mail and wire fraud, maintaining false books and records, conspiracy to commit all these activities, and Racketeer Influenced and Corrupt Organizations Act (RICO) violations. Mr. Newberg was employed by Drexel Burnham Lambert Inc. (Drexel), the other defendants were partners or executives of Princeton/Newport Partners, L.P. (Princeton/Newport) a firm which invested in various forms of securities and commodities. (U.S. v. Regan, 713 F. Supp. 629 (S.D.N.Y. 1989), amended, 946 F.2d 188 (2nd Cir. 1991), cert. denied, Zarzecki v. U.S., 112 S. Ct. 2273 (1992))

In 1991 the Court of Appeals upheld the conviction of Mr. Newberg and Mr. Charles Zarzecki on one count of conspiracy, four counts of wire fraud and two counts of securities fraud. It reversed and remanded their convictions on all other counts. The appellate court reversed and remanded the convictions of the four other defendants on all counts.

The government did not prosecute on the remanded charges and the United States District Court for the Southern District of New York dismissed them, and on September 4, 1992, it vacated the

sentences it had imposed on Mr. Newberg and Mr. Zarzecki - three months incarceration, two years probation on release and a fine of $155,000. In an unreported Endorsement Judge Carter stated:

> "Thus, the major actors in this case have been let go scott free, and only the minor participants, Newberg and Zarzecki, are faced with incarceration and fines for participation in these supposedly criminal endeavors. ... Newberg seeks reconsideration of his Rule 35 motion, previously denied.
>
> Zarzecki has made a persuasive argument that the government would not have proceeded criminally against these defendants solely on the securities fraud charges by citing the court to the case of Peter DaPuzzo. ... DaPuzzo ... was involved in stock manipulation strikingly similar to the acts for which Newberg and Zarzecki were charged and convicted in this case. A New York Stock Exchange Hearing Panel barred DaPuzzo from associating with a NYSE firm for a period of two months and fined him approximately $100,000. Based on these penalties the SEC declined to take further action, and obviously criminal charges are not in the offing.
>
> Thus the criminal charges and convictions of these two defendants is something in the nature of a sport and the government will not bring similar securities fraud charges against any other violator in the foreseeable future, unless, of course, these are combined with other criminal infractions. No purpose is served by incarcerating these men.
>
> Moreover, with the principal actors escaping criminal penalty, it seems grossly unjust to single these defendants out for punishment. I can see no societal purpose served, other than vindictiveness. These men deserve to share in their more fortunate co-defendants' fate, and that is to get off scott free. (Respondent's Exhibit 10 and Exhibit D to Stipulation No. 1).

I conducted a hearing in this administrative proceeding in Los Angeles, CA, on March 9 and 10, 1993. The Commission's Division of Enforcement (Division) put into evidence material from the underlying action, i.e., the testimony of Frederick H. Joseph, a record of taped phone conversations involving Mr. Newberg and Mr.

Zarzecki, and the judgments and opinions of the District Court and the Court of Appeals. The Division did not call any witnesses. Mr. Newberg called six witnesses - two co-workers at Drexel, two customers while he was at Drexel, one friend from college, and one business associate.

Issue

Respondent concedes that the public interest requires the imposition of a sanction (Tr. 7). The issue is whether the appropriate sanction is a bar from being associated with a broker or dealer, the most severe action allowed by Section 15 (b)(6), or a bar from being associated with a broker or dealer with a right to reapply at the end of two or three years (Tr.7).

My findings and conclusions are based on the preponderance of the evidence as determined from the record and upon observation of the witnesses.

Respondent

Mr. Newberg joined the Los Angeles office of Drexel in 1980 at age 23 after earning an undergraduate degree and a Masters of Business Administration, summa cum laude, from the Wharton School of Business. Drexel, a broker-dealer registered with the Commission pursuant to Section 15 of the Exchange Act, was Mr. Newberg's first employer in the securities industry.

At Drexel, Mr. Newberg became a salesman and trader in the High Yield and Convertible Bond Department in Beverly Hills, California. During his entire tenure with the company, Mr. Newberg worked for Mr. Michael Milken. Mr. Milken closely supervised and

shouted demands at the small group of people, including Mr. Newberg, who occupied desks close to his in the trading room. One of Mr. Newberg's accounts was the Princeton-Newport account.

Mr. Newberg left Drexel in 1987 or 1988. The record is unclear whether Mr. Newberg left Drexel briefly in 1985 or 1986. Evidence on this point includes the following contradictory representations: James Dahl, a close friend of Mr. Newberg's, testified about Mr. Newberg's courage in leaving Drexel and then admitted he had forgotten that Mr. Milken had arranged for Mr. Newberg to go "across the street" to conduct trading in a Drexel account (Tr. 79-80, 92-97). George Michaelis, a close friend, testified that Mr. Newberg quit Drexel for a brief time and that Mr. Milken used his super salesman powers to cajole him into returning (Respondent's Exhibit 18). Peter Gardiner testified that he assumed Mr. Newberg's position as co-head of the convertible securities area in February or March 1986 when Mr. Newberg left Drexel (Stipulation 2, Exhibit 7, p. 227-28). In the spring of 1986, Mr. Newberg told Walter Reinhold, another close friend, that he was affiliated with Drexel but not in an active position (Tr. 216). According to the Division, Mr. Newberg took a leave of absence from Drexel in 1986 but returned after a few months to trade in a proprietary account (Post-Hearing Brief, 2; Tr. 92).

I find that in 1986 Mr. Milken shifted Mr. Newberg outside the pressure filled environs of the trading room to a nearby location where Mr. Newberg conducted a trading operation using Drexel's capital. Mr. Milken eliminated this trading operation after Mr.

Newberg had suffered significant losses in October 1987. Mr. Newberg returned to work with Mr. Milken in the trading room in late 1987 or the first half of 1988.

Mr. Newberg initiated the manipulation of the common stock of C.O.M.B. Co. in early April 1985 when he called Mr. Zarzecki at Princeton/Newport and requested that he sell C.O.M.B. stock to get the price down. Drexel was underwriting a $25 million offering of C.O.M.B. convertible bonds. The closing price of C.O.M.B. common stock on April 11, 1985, was an important factor in pricing the bonds. The lower the price of C.O.M.B. common, the easier it would be for Drexel to sell the convertible securities.

On April 11 Mr. Newberg called Mr. Zarzecki at Princeton/Newport and initiated the following conversation (Exhibits E and F to Stipulation No. 1):

Mr. Newberg Hey, how you doing?

Mr. Zarzecki Pretty good Brucie. What's up?

Mr. Newberg Listen, we're doing a deal for a company called Comb Corp. CMCO.

* * *

Mr. Zarzecki What's the name of it?

Mr. Newberg CMCO. We're doing a, a convert. It's probably gonna come 9's up 20. I, I don't think you guys would want to set 'em up, but if you wanted to you could have'em. If you want, you'll have the option.

Mr. Zarzecki Okay

Mr. Newberg But, they're trying to run the stock on us here. Okay?

Mr. Zarzecki Yeah.

Mr. Newberg The stock's 16 bid, up from 15-3/8.

Mr. Zarzecki Okay

Mr. Newberg I don't want this thing to be 16 bid.

Mr. Zarzecki Uh ...

Mr. Newberg I want you to, you know, get rid of it, y--,ah, you know. I want, I want it down to at least 15-3/4, and hopefully lower. Um, I wouldn't mind you selling a little bit first. And um, you're indemnified, uh, you know, my--, it's, y--, you know what I'm saying.

Mr. Zarzecki Let me come back to you in a couple of minutes.

* * *

In a later conversation the same day,

Mr. Newberg I'm gonna figure it out. Uh, if they take it up I want to hit 'em again. And let's just see, if, th--, you know, how real they are.

* * *

Mr. Zarzecki I've got, I'm--, I've done forty and I'm not doing anything until I hear from you.

Still later,

Mr. Zarzecki You know what I did was I went, I went to, direc--, I went to 'em directly for 10,000 and went around them for thirty.

Mr. Newberg Uh huh.

Mr. Zarzecki And . . .

Mr. Newberg (Chuckles)

Mr. Zarzecki . . . I had somebody else come in and do it so you paid, uh, you know, you paid a couple of cents commission to just get around, s--, so they didn't know it was us.

Mr. Newberg Agreed. Uh, that was good.

Mr. Zarzecki So.

Mr. Newberg You're a sleaze bag.

Mr. Zarzecki You taught me man.

Mr. Newberg (Laugh)

Mr. Zarzecki Hey listen turkey . . .

Mr. Newberg Welcome to the world of being a sleaze.

Public Interest

This Commission has been entrusted with the "vital mission" of ensuring the honesty and fairness of the capital markets. (SEC v. Rind, 991 F.2d 1486, 1491 (9th Cir. 1993)) Several factors persuade me that on these facts nothing less than the strongest sanction available - a bar without a specified time to reapply - is required to protect the public interest, and that a lesser sanction will not suffice. (Steadman v. SEC, 603 F.2d 1126, 1139 (5th Cir. 1979), aff'd, 450 U.S. 91 (1981))

Section 15(b)(6) of the Exchange Act requires that the Commission sanction someone like Mr. Newberg, who was convicted of willfully violating the Exchange Act and a rule thereunder while associated with a broker-dealer, if it finds, after notice and opportunity for hearing, that it is in the public interest to do so. A lead case on sanctions is Steadman v. SEC, 603 F.2d 1126, 1139 (5th Cir. 1979), aff'd, 450 U.S. 91 (1981) where the court faulted the Commission for not specifying why it selected the most potent weapon in its arsenal of flexible enforcement powers. The Court considered the following criteria applicable in determining the appropriate sanction:

> deterrence to others in the industry * * * the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of defendant's assurances against future violations, defendant's recognition of the wrongfulness of the conduct, and the likelihood that defendant's occupation will present opportunities for future violations.

I will consider each of these criteria with respect to Mr. Newberg.

Mr. Newberg's conduct in the underlying criminal action was egregious. A jury convicted Mr. Newberg of criminal conduct for manipulation, i.e., the deceptive movement of a security's price accomplished by an intentional interference with the forces of supply and demand. (Ernst & Ernst v. Hochfelder, 425 U.S. 185, 199 (1976); Pagel, Inc., 48 S.E.C. 223, 226 (1985), aff'd sub nom. Pagel, Inc. v. SEC, 803 F.2d 942 (8th Cir. 1986)) Protecting investors against market manipulation lies at the heart of the regulatory scheme created by the Exchange Act. (Ernst & Ernst v. Hochfelder, 425 U.S. 185, 195 (1976)) According to this Commission:

> [I]nvestors and prospective investors...are...entitled to assume that the prices that they pay and receive are determined by the unimpeded interaction of real supply and real demand so that these prices are the collective marketplace judgments that they purport to be. Manipulations frustrate these expectations. They substitute fiction for fact... (Edward J. Mawod & Co., 46 S.E.C. 865, 871-72 (1977), aff'd sub nom., Edward J. Mawod & Co. v. SEC, 591 F.2d 588 (10th Cir. 1979))

As a direct attack on the integrity of the capital markets, manipulation is one of the most serious offenses that the Commission was created to prevent and to deal with. The Exchange Act was intended to ensure open markets for securities where supply and demand meet at prices uninfluenced by manipulation and control. (Patten Securities Corp., Securities Exchange Act Release No. 32619 (July 12, 1993) 13 n.31) The express provisions of the Act and the legislative history show that Congress was bent on stamping out deceptions of this character. No exception was made for the

occasional victimless manipulation. The evil sought to be remedied is [not] victimization but deception. (Edward J. Mawod & Co., 46 S.E.C. 865, 871 (1977), aff'd sub nom., Edward J. Mawod & Co. v. SEC, 591 F.2d 588 (10th Cir. 1979))

Mr. Newberg's criminal conduct which resulted in the conviction was not an aberration. According to Mr. Dahl, a witness called by Mr. Newberg, Mr. Milken required people who worked for him, as Mr. Newberg did, to do whatever was necessary - legal or illegal - to accomplish his demands (Tr. 110-11). People who failed to do whatever was necessary to accomplish Mr. Milken's directives, did not continue working for Mr. Milken. Mr. Newberg worked for Mr. Milken for eight years. The gist of Mr. Dahl's uncontested testimony is that people who worked in Drexel's High Yield Bond Department for Mr. Milken did not consider whether their activities were legal; they acted as if the securities laws and regulations were inapplicable as to them (Tr. 69-71, 97-107, 110-11). Mr. Dahl stated:

> * * * Mike told people to do things. And sometimes you knew it was right, and sometimes you knew it was wrong; sometimes, you didn't know. But, if Mike told you to do something, you did it; and, if you didn't do it, you wouldn't be working there for very long.
>
> * * *
>
> And I was there when Mike was screaming about COMB being up. He felt like COMB stock was being manipulated up, and it was making him crazy, and he was screaming at everybody, "Get it down, get it down. Can't somebody find a seller? What's the matter with you guys? You're incompetent."
>
> * * *
>
> * * * Mike was yelling at Bruce and Gary and everybody else, "Get it down." So, that's what Bruce did. (Tr. 64-65)

Respondent argues that in assessing the appropriate sanction I should consider that Mr. Newberg manipulated the market because Mr. Milken directed him to do so, and that given the chaotic atmosphere at Drexel Mr. Newberg had little alternative but to do what he was told. I find that the evidence introduced by Mr. Newberg that he felt pressure and emotional distress working in the lawless atmosphere at Drexel for Mr. Milken who he believed was "destroying the franchise" does not mitigate Mr. Newberg's conduct (Tr. 190). To the contrary, it exacerbates it. It is compelling that Mr. Newberg, a young, brilliant individual with a graduate business degree from one of the nation's top business schools who was just embarking on his professional career, chose to stay and participate in what he knew were unethical, illegal business practices for an extended period.

Additional support for my finding that Mr. Newberg's criminal conduct with respect to C.O.M.B. stock which was the basis of his conviction was not an aberration is the taped telephone conversations between Mr. Newberg and Mr. Zarzecki. It is apparent from their conversations that this was not the first time these men had agreed to manipulate the market price of a security. Mr. Zarzecki voiced no surprise or shock at Mr. Newberg's request that he act to lower the price of the stock or at Mr. Newberg's pledge to indemnify his activities. Moreover, Mr. Zarzecki knew without asking any clarifying questions that Mr. Newberg was proposing that he manipulate the stock price based on a brief conversation filled with several "you know" by Mr. Newberg. In summary, the

conversation in its informality and content reflected an understanding which leaves no doubt that the two men had similar dealings with one another.

I deny the Division's request presented in its Post Hearing Brief that I take official notice of (1) Mr. Newberg's indictment, along with Michael Milken and Lowell Milken, in U. S. v. Milken, et al., S 89 Cr. 41 (KBW), charging him with manipulating the price of U. S. Home common stock in April 1985, and (2) the Government's Sentencing Memoranda for Mr. Newberg in the underlying criminal case, U.S. v. Regan, which mentions the U. S. Home common stock allegations. Furthermore, I refuse to make an adverse inference against Mr. Newberg because he did not testify and refute "public accusations of another manipulation made in Milken". (Post Hearing Brief, 9) I make this ruling because the government dropped the charges against Mr. Newberg in U. S. v. Milken and a respondent should not be required to refute unproven allegations. Furthermore, the Order Instituting Proceedings did not mention the allegations in the indictment so that Mr. Newberg had no notice that the Division would contend they were relevant in this proceeding. I refuse to take official notice of the Government's Sentencing Memoranda in the underlying criminal action because it represents the position of one side, and Mr. Newberg has not had the opportunity to cross-examine on the contents of the memoranda as provided for in Rule 14(a) of the Commission's Rules of Practice.

In connection with Mr. Newberg's conviction for manipulation, I find unpersuasive Mr. Newberg's contention that his cavalier

comment welcoming Mr. Zarzecki to the world of sleaze and Mr. Zarzecki's comment that Mr. Newberg taught him how to be a sleaze do not reflect Mr. Newberg's true attitude. The only evidence that Mr. Newberg offered to show that he did not mean what he said was from a good friend who opined that Mr. Newberg did or said outrageous, profane things to shock people (Tr. 81-82). Mr. Dahl, the good friend, was biased in Mr. Newberg's behalf, his testimony was of questionable credibility and the parties to these particular calls, Mr. Newberg and Mr. Zarzecki, did not treat the comments as outrageous or profane but as humorous.

The fact of the criminal conviction is conclusive that Mr. Newberg acted with scienter. The circumstances surrounding Mr. Newberg's actions show that he acted with a high degree of scienter. Mr. Newberg was one of the few people at Drexel whose intellectual and analytical powers were remotely comparable to Mr. Milken, and he was, according to friends, intellectually honest. For eight years, Mr. Newberg participated in activities directed by Mr. Milken. Mr. Newberg's witnesses described a work environment where people treated the securities laws and regulations as a joke. (Tr. 62-63, 79-80, 99-99, 155, 190-91; Respondent's Exhibit 18) Mr. Newberg earned over a million dollars in 1984 and over $1.6 million a year in 1985, 1986 and 1987. Mr. Michaelis, Mr. Newberg's friend, noted that:

> In retrospect, Bruce should obviously have quit Drexel and washed his hands of the whole affair. He had certainly made himself enough money and with his talent

could readily have sought alternatives within the financial community. (Respondent's Exhibit 18)

It seems reasonable to conclude that the reason Mr. Newberg continued to work in conditions which allegedly made him very uncomfortable was the considerable amount of money he earned.

One of the purposes of a sanction is to deter the person or persons subject to the sanction and others who may be tempted to engage in similar violations. Congress saw past misconduct as the basis for an inference that the risk of probable future misconduct was sufficient to require exclusion from the securities business. (Arthur Lipper Corp., 46 S.E.C. 78, 101 (1975), penalty mod.; petition otherwise denied, Arthur Lipper Corp. v. SEC, 547 F.2d 171 (2nd Cir. 1976)) This record affirms the well settled principle that the securities industry presents many opportunities for abuse and overreaching so that it is in the public interest not to allow participation by individuals whose continued participation would expose investors to undue risks. (Richard C. Spangler, 46 S.E.C. 238, 252-53 (1976). See Archer v. SEC, 133 F.2d 795, 803 (8th Cir. 1943), cert. denied, 319 U. S. 767 (1943); Hughes v. SEC, 174 F.2d 969, 975-76 (D.C. Cir. 1949))

There is no direct evidence that Mr. Newberg recognizes that his conduct which resulted in the criminal conviction was wrong and that he will not repeat his illegal conduct.

Respondent is wrong that Mr. Newberg's evidence established his reputation for integrity. Mr. Newberg's evidence is unpersuasive for several reasons. I do not consider Mr. Dahl and

Mr. Winnick, who testified in support of Mr. Newberg, credible witnesses based on my observations of their demeanor and reflection on their testimony. Universal Camera Corp. v. NLRB, 340 U.S. 474 (1951); Kopack v. NLRB, 668 F.2d 946, 953 (7th Cir. 1982), cert. denied, 456 U.S. 994 (1982); Jonathan Garrett Ornstein, Securities Exchange Act Release No. 31557 (December 3, 1992), 52 SEC Docket 4424, 4426. For example, Mr. Dahl admitted on cross-examination that his direct testimony praising Mr. Newberg for his courage in leaving Drexel and all the money it provided was wrong because he had forgotten that Mr. Newberg did not leave Drexel but had gone across the street to work in an operation Mr. Milken set up for him using Drexel money (Compare Tr. 79-80 and 91-93). Furthermore, Mr. Dahl was uncertain of Mr. Newberg's employment status vis-a-vis Drexel in 1986 after Mr. Newberg left the trading room, even though Mr. Newberg was his close friend and trustee of Mr. Dahl's children's trust (Tr. 92-93). Finally, I do not believe Mr. Dahl's claim that he thought everyone had agreements with customers to buy stock back and that he did not realize that parking securities and indemnifying bond buyers against any loss, which he did while he worked with Mr. Newberg at Drexel from 1981 on, were unlawful activities that violated exchange and company rules. Mr. Dahl worked in the securities industry for six or seven years before he joined Drexel and Mr. Milken. He earned $4.5 million in 1985, $10 million in 1986, $14.8 million in 1987 and $23 million in 1988.

Mr. Winnick was not a credible witness. His discomfort under oath was obvious. He could not explain the major differences

between his direct testimony and what he had told Commission investigators in January 1992 or what he had told Division counsel the week before this hearing (Tr. 126-37).

I do not question the sincerity of Howard Marks, George Michaelis, Walter Reinhold and Jeffrey Sussman who testified that in their opinion Mr. Newberg is honest, that he has learned a lesson and that he should be allowed to participate in the securities industry. Mr. Newberg is fortunate to have the confidence of these credible people with impressive business credentials. I find this testimony unpersuasive because it is based on personal friendship with a view to what is in Mr. Newberg's best interest not the public's. Mr. Michaelis, Mr. Marks and Mr. Reinhold would not change their opinion that Mr. Newberg is an honest person despite the jury finding that he was guilty of criminal conduct. While admirable on a personal level, this close-mindedness reveals a lack of objectivity which makes their views suspect based on bias (Tr. 147, 192 and 225). It is also significant that these business and securities professionals had no first-hand knowledge of Mr. Newberg's criminal conduct (Tr. 156, 170, 199-200 and 231-32). As to these individuals, Mr. Newberg was honest in his professional conduct, as to others he was not.

I disagree that Judge Carter's comments in the Endorsement to Mr. Newberg's sentence in the underlying criminal action should be interpreted to mean that Judge Carter supported an administrative sanction for Mr. Newberg milder than a bar. I reach this conclusion because a criminal proceeding occurs in a very different context

from an administrative proceeding. In a criminal proceeding, the prosecution is required to prove the charges beyond a reasonable doubt and the most severe sentence possible in this criminal case was confinement and loss of personal freedom. In this administrative proceeding, the government's burden of proof was preponderance of the evidence, and the most severe sanction possible was a prohibition on certain employment. Judge Carter's comments with respect to his decision not to incarcerate Mr. Newberg occurred in response to a different set of considerations and in a totally different type of legal proceeding and do not translate into a preference for a particular administrative sanction in this proceeding.

Noting the deference accorded an agency's interpretation of a statute it is charged with administering, the Division argues that Commission practice has established authority for it to bar Mr. Newberg from the securities industry generally, i.e., from being associated with any broker, dealer, government securities dealer, investment company or investment adviser. Respondent strongly disagrees. Because the proceeding was brought under Section 15(b)(6) of the Exchange Act which authorizes the Commission to "bar such person from being associated with a broker or dealer, or from participating in an offering of penny stock", he argues that the Commission has no authority to issue the broad bar the Division requests.

The question is one of jurisdiction and one of fairness. Although the Division is correct as a matter of general

administrative law, I question the applicability of that principle here where the agency's construction has been developed through settlement rather than litigation. In addition, there is the question of basic fairness. As noted by Mr. Newberg, the Order Instituting Proceedings, the document which gave him notice and which defines the scope of the proceeding, gave no indication that the sanction imposed could be a bar of such scope. Furthermore, there is no evidence in this record that Mr. Newberg acted in any other capacity in the securities industry other than as a person associated with a registered broker-dealer. For these reasons, I decline to issue a bar in the scope which the Division requests. 1/

Finally, I reject Mr. Newberg's argument that the sanction he seeks - a bar from association with a broker-dealer with the right to reapply to become associated after two years - is appropriate based on comparisons with sanctions imposed in other proceedings.

1/ The Division's Post Hearing Reply Brief cites many settled proceedings. The Commission in Cranford Delano Newell, Admin. Proc. No. 3-6174 (August 19, 1988) stated that the securities laws authorized it to bar persons from each of the fields covered by its consent orders. I consider this order non-binding because it is unique in several respects. It is an unpublished order involving a respondent who consented to a broad bar which had become final, and who six years later challenged the Commission's authority to order such a bar.

In litigated cases, Judge Markun in Russell A. Phipps, Admin. Proc. No. 3-6802 (May 31, 1988), Notice That Initial Decision Has Become Final, Securities Exchange Act Release No. 25878 (July 1, 1988), 41 SEC Docket 458, and Judge Regensteiner in Donald T. Sheldon, Admin. Proc. No. 3-6626 (December 2, 1988), 119 n.88, Commission Opinion, Securities Exchange Act Release No. 31475 (November 18, 1992), 52 SEC Docket 3826 refused to impose bars which went beyond the language of the statutes cited in the Order Instituting Proceedings.

It has been long settled that appropriate remedial action depends on the facts and circumstances of each particular case, and cannot be precisely determined by comparison with actions elsewhere. (See Butz v. Glover Livestock Com. Co., 411 U.S. 182, 187 (1973)

I have considered all the proposed findings and arguments submitted by the parties. I accept those that are consistent with this initial decision and reject those that are inconsistent.

Order

Based on the findings set out above, I ORDER that Bruce L. Newberg is barred from being associated with any broker or dealer.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice. Pursuant to that rule, this initial decision shall become the final decision of the Commission as to each party who has not filed a petition for review pursuant to Rule 17(b) within 15 days after service of the initial decision upon him or her, unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to a party. If a party timely files a petition for review or the Commission acts to review as to a party, the initial decision shall not become final as to that party.

Brenda P. Murray
Administrative Law Judge

Washington, D.C.
September 1, 1993