Before the
Administrative Hearing Commission
State of Missouri

COMMISSIONER OF SECURITIES,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 08-0428 SE
	)	
STEPHEN M. COLEMAN, DAEDALUS CAPITAL, LLC, and CHICKEN LITTLE FUND GROUP, INC.,	)))	
	)	
Respondents.	)	

DECISION

The investment advisor registrations of Daedalus Capital, LLC ("Daedalus") and Chicken Little Fund Group, Inc. ("CLFG"), and the investment advisor representative registration of Stephen M. Coleman, are not subject to discipline.

Procedure

The Commissioner of Securities ("the CoS") filed a complaint on March 5, 2008, seeking this Commission's determination that the investment advisor registrations of Coleman, Daedalus, and CLFG are subject to discipline.

This Commission convened a hearing on the complaint on April 16, 2009. Assistant Attorney General Sarah E. Ledgerwood represented the CoS. Larry D. Coleman represented the respondents.

Evidentiary Rulings

We took with the case Coleman's objection to Petitioner's Exhibit 3, which is the investigator's summary of various items appearing on bank statements, and related testimony. Coleman argued that this evidence is irrelevant. We overrule the objection and admit Petitioner's Exhibit 3 and the investigator's testimony into evidence.

Findings of Fact

The Respondents

1. Daedalus was formed on August 23, 1994, as a limited liability company in the state of Missouri. Daedalus is a Missouri-registered investment advisor with an address of 500 North Broadway, Suite 1450, St. Louis, Missouri. Daedalus is registered in Missouri through the Central Registration Depository System ("CRD") maintained by the Financial Industry Regulatory Authority with CRD Number 112705. Daedalus was previously registered with the United States Securities and Exchange Commission ("the SEC"). Daedalus is the super-majority shareholder and the investment advisor of CLFG.

2. CLFG is a Missouri-registered investment advisor with an address of 500 North Broadway, Suite 1450, St. Louis, Missouri. CLFG is registered in Missouri through the CRD with Number 135592. CLFG was incorporated in Missouri on December 15, 2004, to engage in the business of forming and sponsoring mutual funds.

3. Stephen M. Coleman is a Missouri-registered investment advisor representative with a business address at 500 North Broadway, Suite 1450, St. Louis, Missouri. Coleman is registered in Missouri through the CRD with Number 1004434, and is a representative of both Daedalus and CLFG. Coleman is the founder, owner and chief investment officer of Daedalus. Coleman is also the president, promoter, and director of CLFG. In addition, Coleman served as the portfolio manager of the Chicken Little Growth Fund ("the Growth Fund"). Coleman holds a

bachelor's degree from Amherst College and a master's in business administration from Stanford University School of Business.

Prior Legal Actions

4. On or about January 10, 1996, Tickets Now borrowed a total amount of $500,000 from Boatmen's Bank ("Boatmen's") pursuant to two separate promissory notes. On or about February 13, 1997, Tickets Now borrowed an additional amount of $200,000 from Boatmen's pursuant to another promissory note. On or about February 13, 1997, Coleman executed and delivered to Boatmen's an Unlimited Guaranty pursuant to which he guaranteed the full and prompt payment of all obligations of Tickets Now to Boatmen's. On or about February 13, 1997, Daedalus also executed and delivered to Boatmen's an Unlimited Guaranty pursuant to which Daedalus guaranteed the full and prompt payment of all obligations of Tickets Now to Boatmen's. Boatmen's brought suit against Tickets Now, Coleman, Daedalus and another defendant in the Circuit Court of the City of St. Louis for payment of the obligations. On June 9, 1997, the court entered a consent judgment stating that the defendants were jointly and severally indebted to Boatmen's in the sum of $728,430.72, consisting of $700,000 in principal, $17,477.30 in interest, and $10,953.42 in attorney fees and costs incurred by Boatmen's in collecting the principal and interest.

5. On or before August 8, 1996, Michael E. Kennedy entered into an agreement with Coleman and Daedalus Entertainment whereby Kennedy agreed to loan them $50,000 as capital for the "ALL EYES ON US" tour. Coleman and Daedalus Entertainment agreed to repay $100,000 within 30 calendar days of the date of the agreement, and if they failed to do so, they would owe an additional $50,000 for each delinquent 30-day period. The loan agreement stated that the agreement was between Kennedy and Coleman, was personally guaranteed by Coleman, and was a general obligation of Daedalus Entertainment Finance Co., LLC. Kennedy brought

suit against Coleman and Daedalus in the Circuit Court of the City of St. Louis for breach of contract, asserting that they had only repaid $5,000 on the agreement. On or about April 10, 1997, the court entered a consent judgment, whereby judgment was entered in favor of Kennedy for the principal sum of $45,000 plus interest, for a total of $47,250. On November 13, 1997, the court issued a garnishment and writ of execution against Coleman and Daedalus Entertainment for $47,250.

Unified Series Trust

6. Unified Series Trust ("UST") is an open-end investment company incorporated under the laws of the State of Ohio. UST was organized to engage in the business of a registered open-end investment company and is governed by an independent board of directors. UST offers several series of shares of mutual funds to investors.

7. In or about January 2005, Coleman entered into discussions with UST to start a mutual fund. As a result of these discussions, on August 5, 2005, UST organized and began a non-diversified mutual fund series – the Growth Fund. The Growth Fund sought to provide long-term capital appreciation to investors who purchased interests in it.

8. In January 2005, CLFG filed under SEC Rule 506 a Notice of Sale of Securities, pursuant to Regulation D, with the SEC and with the Securities Division of the Missouri Office of Secretary of State, to sell CLFG stock.

9. CLFG entered into a management agreement with UST on July 22, 2005, to act as the sole investment advisor to the Growth Fund. Under this agreement, CLFG would receive 2.25% of the average value of the Growth Fund's daily net assets as compensation for services.

10. CLFG also agreed to assume the liability for the Growth Fund's expenses and fees that exceeded 3% of the Growth Fund's average daily net assets through July 31, 2007. The Growth Fund's prospectus filed by UST with the SEC reads, in part, as follows:

> This management fee is higher than the management fee paid by most other mutual funds. However, the advisor contractually has agreed to waive its management fee and/or reimburse expenses so that Total Annual Fund Operating Expenses, excluding brokerage fees and commissions, any 12b-1 fees, borrowing costs . . . taxes and extraordinary expenses, do not exceed 3.00% of the Fund's average daily net assets through the end of its second fiscal year. Each waiver or reimbursement by the advisor is subject to repayment by the Fund within the three fiscal years following the fiscal year in which that particular expense is incurred; provided that the Fund is able to make the repayment without exceeding the 3.00% expense limitation.

11. From August 5, 2005, up to July 31, 2006, the Growth Fund incurred expenses of approximately 35% of its daily net assets. Under the management agreement, CLFG was responsible for payment of the Growth Fund's expenses above 3%, or 32%. According to the Growth Fund's Annual Report dated July 31, 2006, CLFG was responsible for $128,476 in expenses. CLFG owed $27,852 to the Growth Fund.

12. When CLFG was unable to pay the Growth Fund expenses, the UST board of directors voted to discontinue offering Growth Fund shares for purchase. On December 1, 2006, a Supplement to the Prospectus and Statement of Additional Information filed by UST with the SEC stated, among other things:[1]

> The advisor to the Fund has indicated that it is currently not able to reimburse the Fund for certain operating expenses as required by the advisor's expenses limitation/reimbursement agreement with the Trust on behalf of the Fund. . . . The advisor has advised the Board of Trustees that it is actively seeking to raise capital to reimburse the Fund for all accrued reimbursable expenses; however there is no guarantee that the advisor will be able to obtain such funds. . . . The Board of Trustees will be forced to consider liquidating the Fund in the event the advisor fails to reimburse the Fund (or to make acceptable arrangements for payment) by December 31, 2006.

[1] Ex. 23, ¶ 11.

13. On December 7, 2006, another Supplement to the Prospectus and Statement of Additional Information was filed again with the SEC, this time stating, among other things, the following:[2]

> On December 4, 2006, the advisor reimbursed the Fund for all outstanding amounts through November 30, 2006. As a result, the Fund again began offering its shares for purchase. . . .

14. On January 16, 2007, UST filed a Supplement to the Prospectus and Statement of Additional Information with the SEC stating:[3]

> [T]he Board of Trustees determined to redeem all outstanding shares of Chicken Little Growth Fund and to cease operations of the Fund due to the Board's decision that it is no longer viable to continue the Fund.

15. On January 18, 2007, Coleman sent a letter to all investors in CLFG, stating:[4]

> I have some very bad news. Chicken Little Growth Fund has ceased operations. The Fund is governed by an independent Board of Directors. The Unified board decided on Tuesday, January 16, 2007 to begin the liquidation process. I was informed by telephone. Several reasons were given. But, the most significant were the regulatory risk to the other assets of the Unified Series Trust, the small amount of assets that had been attracted to the fund, and the uncertainty of available funding for the ongoing cost of operations.
>
> We are devastated by this development. In the end, we had $1.2 million in fund assets. Our net asset value rose from $10.00 per share on August 31, 2005 to $16.41 on January 16, 2007, a 64.1% gain in seventeen months.
>
> We do not know what this means for the future. We tried our very best. We are sorry.

---

[2]Ex. 23, ¶ 12.
[3]Ex. 23, ¶ 13.
[4]Ex. 1, Attachment B.

Caitlyn Shabel[5]

16. On July 11, 2005, Caitlyn Shabel's father took her and her brother to visit Coleman regarding an investment of inheritance money. Shabel's father was a Daedalus client and was very pleased with his investment returns. Shabel was 22 years old. She was not an accredited investor and was not a sophisticated investor. Shabel did not tell Coleman that she wanted a safe investment so that she could buy a house in the future.

17. Coleman provided information so that Shabel could make her own decision regarding her investments. Shabel invested one half of the inheritance funds into various stocks that Coleman recommended and one half into CLFG. Shabel purchased 225 shares of CLFG for an investment of $22,500.

18. Shabel received a Private Placement Memorandum ("PPM") from Coleman for the investment in CLFG. The PPM states:[6]

> THE COMPANY
>
> The issuer, Chicken Little Fund Group, Inc. (the "Company"), was incorporated in Missouri on December 15, 2004, to engage in the business of forming and sponsoring mutual funds. . . .
>
> SUITABILITY STANDARDS
>
> The risks and illiquidity of an investment in the Company by the purchase of Shares hereunder make this investment suitable only for investors who have substantial net worth and income. The Shares should be purchased only as a long-term investment, and an investor should be able to afford the complete loss of his or her investment. . . . The Company will have sole discretion in determining the suitability of this investment for an investor. . . .

[5] Shabel has married since the time of the events in this case and is also known as Caitlyn Shabel Eyberg. We refer to her as "Shabel" because that was her name at the time of the events in this case.

[6] Ex. 2, Attachment B.

USE OF PROCEEDS

The proceeds from this offering will be used to form and promote a new mutual fund (see BUSINESS). . . .

BUSINESS

General

The Company has been formed to engage in the business of forming and managing mutual funds. The Company intends to use the proceeds from this offering for working capital, reserves and direct investment in funds formed by the Company. The Company intends to form its first fund under the name Chicken Little Growth Fund (the "Fund") and have the Fund available for investment by the general public in the first quarter of 2005. The Company may form additional funds in the future.

The Fund will be managed by Daedalus Capital, L.L.C. ("Daedalus"), which is the Company's controlling shareholder. We expect the Fund to benefit from the ten-year track record of Daedalus. As of November 30, 2004, the ten-year track record was 17.37%. According to the data provided by Morningstar, Inc., this performance ranks in the top 1% of the nation. . . . We also plan to promote the fact that Daedalus was ranked the #1 Money Manager in the United States on three occasions by Pensions & Investments magazine's PIPER database. . . .

The Fund

The Company expects to use Unified Fund Services, Inc. ("Unified") of Indianapolis, Indiana to form and administer the Fund and to provide all services necessary to operate and distribute the Fund. Unified would be responsible for the functions of administration, compliance, fund accounting, transfer agency, custody, legal support, marketing and distribution. . . . The Fund will be managed by Daedalus and its principal, Stephen M. Coleman. The Company will pay Daedalus for investment advisory services for all funds of the Company a fee of $100,000 per quarter. Additional compensation shall be paid to Stephen M. Coleman, Portfolio Manager of the Fund, of $25,000 per quarter plus a Founders fee of 25 basis points of all assets under management to the extent that assets under management exceed $50 million at the end of any quarter. . . .

RISK FACTORS

> Investment in the Company by purchase of the shares offered hereby involves certain risks, which include the following:
>
> 1. Business Risks. The Company is subject to the various risks of a start-up business, including the status of the economy and competition from other businesses offering similar services. No representation is made as to future favorable operations of the Company or as to the future income or loss of the Company or its later value.
>
> 2. Limited Transferability and Illiquidity. Purchase of the Shares should be considered a long-term, illiquid investment.

19. Shabel also signed a subscription agreement stating in pertinent part:[7]

> (1) The undersigned hereby acknowledges receipt of a copy of the Private Placement Memorandum dated December 23, 2004 (the "Memorandum"), relating to the offering of Class A 12.5% Convertible Preferred Stock (the "Shares") of Chicken Little Fund Group, Inc. (the "Corporation").
>
> * * *
>
> (3) To induce acceptance of this subscription, the undersigned represents and warrants to the Corporation as follows:
>
> * * *
>
> (d) I recognize that investment in the Corporation involves certain risks, and I have taken full cognizance of and understand the risks related to the purchase of the Shares, including those set forth under the caption "Risk Factors" in the Memorandum.
>
> (e) I have adequate means of providing for my current needs and possible personal contingencies, and have no need for liquidity in this investment. My commitment to illiquid investments is reasonable in relation to my net worth.

20. Coleman fully disclosed to Shabel the fact that he was president of CLFG, and he also disclosed the compensation that he received from that company.

[7] Ex. 2, Attachment A-1.

21. Shabel received a letter from Coleman dated August 26, 2005, stating:[8]

> We are proud to share with you the prospectus for Chicken Little Growth Fund. We hope that you find it suitable for the portion of your assets that seeks long-term capital appreciation in the stock market.

22. Shabel did not understand the relationship between CLFG and the Growth Fund. She was confused by their similar names. Shabel believed that her purchase of CLFG stock was actually an investment in the Growth Fund.

23. Coleman provided Shabel with a packet of information discussing his qualifications as an investment advisor.

24. Shabel received her first dividend check for her investment in CLFG in March 2005. The check was approximately $700. She received a total of four dividend checks between March 2005 and March 2006, each approximately $700.

25. Shabel received a letter from Coleman dated March 31, 2006, stating that the board of directors had decided to delay future dividend payments until CLFG was profitable. Shabel was disappointed. She never received another dividend payment.

26. On June 1, 2006, Shabel received an update on the other portion of her portfolio with Coleman, but not CLFG.

27. On June 13, 2006, Shabel received a letter from Coleman about another investment opportunity, but no information about CLFG.

28. Shabel received Coleman's letter, dated January 18, 2007, to all CLFG investors, announcing that the board of directors of the Growth Fund had ceased the Growth Fund's operations and was beginning to liquidate. Shabel was shocked and disappointed. She was very worried about the $22,500 principal that she had invested in CLFG.

---

[8] Ex. 2, ¶ 11.

29. When Shabel lost her investment in CLFG, she pulled out all of her money that Coleman had invested in other stocks as well.

Sharon Hall

30. On or about September 22, 2005, Sharon Hall, a Georgia resident,[9] purchased 200 shares of CLFG preferred stock for $20,000. Hall was introduced to the CLFG investment through her MetLife financial planner in Georgia, Don Roman, who was familiar with Coleman.

31. Hall received one dividend payment around December 31, 2005, of $625.

32. On or about September 21, 2006, Hall made an additional investment of $50,000 into CLFG.

33. On October 1, 2006, Coleman sent a letter to Hall stating:[10]

> I thank you for your September 21, 2006, investment of $50,000 into Chicken Little Fund Group Inc. Your $50,000 investment entitles you to ownership of 1% of the common stock of Chicken Little Fund Group, Inc. This supplements your prior investment of $20,000.00. In addition, I have stated that it is Daedalus Capital, L.L.C.'s commitment, as the majority shareholder of Chicken Little Fund Group, Inc., to return your $50,000.00 on or before October 21, 2006. After you receive this $50,000.00 payment, your ownership will remain the same.

34. On October 20, 2006, Coleman sent a second letter to Hall stating:[11]

> On October 1, 2006 I wrote a letter to you regarding the $50,000 investment that you made in Chicken Little Fund Group, Inc. In that letter I stated that Daedalus Capital, L.L.C., as the majority owner of Chicken Little Fund Group, Inc., was committed to returning your initial investment on or before October 21, 2006, which is tomorrow. Today, I must admit that we cannot meet this deadline. A number of factors are to blame.
>
> I ask that you remain patient. There are several positive events taking place in the next thirty days. We should be able to return

[9]The complaint refers to Hall as "GR1."
[10]Ex. 23, ¶ 34.
[11]Ex. 23, ¶ 35.

> your capital by November 20, 2006 or sooner. That is our goal. I apologize for the delay.

35. As of October 17, 2007, Hall had not received a return of any of her investment.

Jerry Parker

36. In January 2006, Jerry Parker had the opportunity to visit the offices of Daedalus Capital at 550 North Broadway, Suite 1450, St. Louis Missouri. Parker had been a client of Daedalus and Coleman for approximately three years. He was pleased with his investments and trusted Coleman. Parker voluntarily served as a marketer for Daedalus, attempting to attract other clients to do business with the firm.

37. Coleman invited Parker into his private office and gave a presentation to sell equity shares of CLFG. Coleman had information about CLFG written on a dry-erase board in his office.

38. Parker was 62 years old and sought to supplement his retirement income. Parker did not tell Coleman that he wanted a low-risk investment because he was retired and living on a fixed income.

39. Coleman told Parker that the investment was a 12.5% preferred stock offering. Coleman gave Parker the impression that Coleman was one of the principals involved in the day-to-day operation of the Growth Fund. Coleman also stated that he had contacted an outside company that specialized in helping to launch new mutual funds.

40. Coleman stated that once the Growth Fund reached a certain value, there would be a calculation of basis points and an opportunity to sell the stock back, at a profit, to the corporation. Parker asked Coleman to explain what basis points were, and Coleman stated that it was a complex formula based on how the Growth Fund performed.

41. Parker received a PPM from Coleman for the investment in CLFG. The PPM was identical to the PPM provided to Shabel. Parker also signed a subscription agreement that was the same as the subscription agreement provided to Shabel.

42. Coleman fully disclosed to Parker the fact that he was the president of CLFG, and he also disclosed the compensation that he received from that company.

43. Based on Coleman's statements, Parker used a portion of his retirement funds to purchase 200 shares of preferred stock of CLFG for $20,000. Parker was not an accredited investor before or at the time he made the CLFG investment.

44. Parker did not receive any dividend payments from his CLFG investment.

45. Parker received the same letter that Shabel received, dated January 18, 2007, stating that the board of directors of the Growth Fund had ceased the Growth Fund's operations and was beginning to liquidate. Parker was surprised by the letter.

Resolution of Prior Legal Actions

46. As of March 17, 2008, when Coleman filed his answer in this case, the debt in the Tickets Now matter had been paid in part and reduced to $220,000. At the time of the hearing on April 16, 2009, the Kennedy debt was paid off. Coleman had repaid the $50,000, plus five percent interest, and Kennedy considered the matter settled. Kennedy was a friend of Coleman's, but had been represented by a very zealous lawyer who had pursued the collection on the judgment. Coleman did not disclose these consent judgments to Shabel or Parker.

SEC Investigation

47. The SEC investigated Coleman and CLFG, but found no wrongdoing.

Conclusions of Law

We have jurisdiction over the complaint pursuant to § 409.4-412(k),[12] which provides:

> If a proceeding is instituted to revoke or suspend a registration of any . . . investment adviser . . . pursuant to subsection (b), the commissioner [of securities] shall refer the matter to the administrative hearing commission. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in such cases. The commissioner shall have the burden of proving a ground for suspension or revocation pursuant to this act. The administrative hearing commission shall submit its findings of fact and conclusions of law to the commissioner for final disposition.

Respondents may be liable for each other's conduct. A corporation is liable for any of its agents' actions on the corporation's behalf.[13] Coleman is liable for the corporation's actions of which he had at least constructive knowledge.[14]

Credibility Determination

This Commission must judge the credibility of witnesses, and we have the discretion to believe all, part, or none of the testimony of any witness.[15] When there is a direct conflict in testimony, we must make a choice between the conflicting testimony.[16] In a civil case such as this, the standard of proof is a preponderance of the credible evidence.[17] This means "more probable than not," and not "beyond a reasonable doubt," which is the standard in criminal cases.[18]

The CoS presented affidavits from Shabel and Parker. They did not appear at the hearing and testify in person. No affidavit was provided for Hall. The basic facts regarding GR1 appear

---

[12]Statutory references are to RSMo Supp. 2009.
[13]***Fowler v. Park Corp.***, 673 S.W.2d 749 (Mo. banc 1984).
[14]***State ex rel. Doe Run Res. Corp. v. Neill***, 128 S.W.3d 502, 505 (Mo. banc 2004).
[15]***Harrington v. Smarr***, 844 S.W.2d 16, 19 (Mo. App., W.D. 1992).
[16]*Id.*
[17]***State Bd. of Nursing v. Berry***, 32 S.W.3d 638, 642 Mo. App., W.D. 2000).
[18]*Id.*

in the CoS's order of referral to this Commission.[19] The only live witnesses that the CoS presented were an investigator and a former investigator; these witnesses had no first-hand knowledge of the events alleged in the CoS's complaint. In contrast, Coleman testified in person at the hearing. Coleman testified as to his vast experience in the investment industry and his involvement in starting up and operating Daedalus and CLFG. We had the opportunity to observe his demeanor, and we find him to be a credible witness. Our findings of fact reflect our determination of the credibility of the witnesses.

Recommendations Unsuitable for Investor

Section 409.4-412(d) provides:

> A person may be disciplined . . . if the person:
>
> * * *
>
> (2) Willfully violated or willfully failed to comply with this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous ten years;
>
> * * *
>
> (13) Has engaged in dishonest or unethical practices in the securities, commodities [or] investment . . . business within the previous ten years[.]

Regulation 15 CSR 30-51.172(1) provides:

> Grounds for the discipline or disqualification of investment advisers . . . shall include . . . the following "dishonest or unethical practices in the securities business."
>
> (A) Recommending to a client to whom investment, supervisory, management, or consulting service are provided that he/she purchase, sell, or exchange any security, commodity, or other investment when the adviser does not have reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's overall portfolio, investment

[19]Ex. 23, ¶¶ 29-36.

> objectives, financial situation and needs, investment experience, and any other information known by the adviser[.]

The CoS argues that investment in CLFG was an unsuitable investment recommendation for Parker and Shabel because they were not accredited investors and did not have sufficient knowledge and experience in financial matters to evaluate the merits and risks of CLFG. We have found Coleman to be a credible witness. Therefore, contrary to the CoS's assertions, we have found that Parker did not tell Coleman that he wanted a low-risk investment because he was retired and living on a fixed income, and Shabel did not tell Coleman that she wanted a safe investment so that she could buy a house in the future. Parker had been a Daedalus client for three years and was pleased with the results. Shabel's father was a client of Coleman's and took Shabel and her brother to Coleman. Coleman provided a PPM to Shabel and Parker that explained the risks of investing in CLFG as a start-up company. Parker and the Shabel family had previously been happy with Daedalus investments, but were dissatisfied with their investment results with CLFG. We cannot discipline investment advisors simply because a particular investment yielded bad results. The evidence presented fails to meet the burden. Coleman had no reason to believe that an investment in CLFG was unsuitable for Shabel and Parker. Therefore, Coleman's recommendation that Parker and Shabel invest in CLFG was not a dishonest or unethical business practice. Respondents are not subject to discipline under § 409.4-412(d)(2) and (13) for violating a rule and engaging in dishonest or unethical practices.

<u>Failure to Disclose Material Facts
Regarding Advisor's Financial Condition</u>

Regulation 15 CSR 30-51.172(1) provides:

> Grounds for the discipline or disqualification of investment advisers . . . shall include . . . the following "dishonest or unethical practices in the securities business."

* * *

> (M) Failing to disclose to any client or prospective client all material facts with respect to:
>
> 1. Any financial condition of the adviser that is reasonably likely to impair the ability of the adviser to meet contractual commitments to clients, if the adviser has discretionary authority (express or implied) or custody over such client's funds, assets, or securities[.]

The CoS argues that Coleman and CLFG failed to disclose to Hall a material fact that CLFG did not have sufficient assets to meet its contractual obligation under the management agreement to pay the Growth Fund's expenses.[20] Hall made an investment, but there is no evidence that Coleman had discretionary authority or custody over Hall's funds, assets, or securities. Further, there is no evidence that Coleman and CLFG failed to make a disclosure to Hall of a material fact that CLFG did not have sufficient assets to meet its contractual obligations. We find no cause for discipline for a dishonest or unethical business practice under Regulation 15 CSR 30-51.172(1)(M)1.

<u>Failure to Disclose Legal Events</u>

Regulation 15 CSR 30-51.172(1) provides:

> Grounds for the discipline or disqualification of investment advisers . . . shall include . . . the following "dishonest or unethical practices in the securities business."
>
> * * *
>
> (M) Failing to disclose to any client or prospective client all material facts with respect to:
>
> * * *
>
> 2. Any legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients[.]

[20]The CoS does not make this argument as to Shabel or Parker.

Referring to the consent judgments involving Kennedy and Boatmen's, the CoS argues that:[21]

> 72. Defaulting on a promissory note and failing to pay a judgment resulting in a "garnishment and writ of execution" for collection, are legal events that are material to an evaluation of the integrity of Coleman and/or Daedalus.
>
> 73. Coleman and Daedalus violated 15 CSR 30-51.172(1)(M)(2) when these legal events were not disclosed.

"Integrity" is defined as:[22]

> Firm adherence to a code of esp. moral or artistic values : INCORRUPTIBILITY

The consent judgments were entered in 1997. Shabel's investment was in July 2005, and Parker's investment was in January 2006. In this context, a past default on a promissory note is not a legal event that is material to an evaluation of Coleman and/or Daedalus' integrity. Coleman had made payments on the Boatmen's debt and had settled the Kennedy debt. Coleman admitted that he did not disclose these consent judgments to Shabel and Parker, but he had no need to disclose them because they were not material to an evaluation of Coleman and/or Daedalus's integrity. We find no dishonest or unethical business practices under Regulation 15 CSR 30-51.172(1)(M)2.

<u>Failure to Make Written Disclosure of Conflicts of Interest</u>

Regulation 15 CSR 30-51.172(1) provides:

> Grounds for the discipline or disqualification of investment advisers . . . shall include . . . the following "dishonest or unethical practices in the securities business"
>
> * * *
>
> (L) Rendering advice to a client before making written disclosure to that client about any material conflict of interest relating to the adviser, its representative, or any of its employees, when that

---

[21]Complaint ¶¶ 72-73.
[22]MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 650 (11th ed. 2004).

> conflict could reasonably be expected to impair the rendering of unbiased and objective advice including:
>
> 1. Compensation arrangements connected with advisory services to clients which are in addition to compensation from those clients for such services[.[23]]

The CoS alleges:[24]

> A material conflict of interest existed that could reasonably be expected to impair the rendering of unbiased and objective advice in Coleman's dual role as the president of CLFG and as investment adviser representative of Daedalus, when Coleman rendered advice to a Daedalus client, MR1 to purchase CLFG stock knowing that CLFG's funds were needed to pay the Growth Fund's expenses, and that if CLFG lacked sufficient funds to meet the Growth Fund's expenses, UST would discontinue the Growth Fund.

The CoS argues that Coleman failed to make written disclosure of this conflict of interest to Parker and that this is a dishonest or unethical business practice under Regulation 15 CSR 30-51.172(1)(L)1.

The CoS also alleges:[25]

> Coleman, as portfolio manager of the Growth Fund, was eligible to receive compensation in the form of a Founders Fee of 25 basis points on assets under management, and was also to receive the same compensation from CLFG as well. Thus, the more money from investors Coleman attracted to CLFG and the Growth Fund from his recommendation to purchase CLFG stock and Growth Fund shares, the more compensation Coleman could gain.

The CoS argues that Coleman failed to make written disclosure of these compensation arrangements when he advised Parker to purchase CLFG stock, and that this is a dishonest or unethical business practice under Regulation 15 CSR 303-51.172(1)(L)1.

---

[23]The CoS's complaint, ¶ 52, also quotes 15 CSR 30-51.172(1)(L)2, but the complaint, ¶¶ 76-88, makes no allegation that Respondents violated 15 CSR 30-51.172(1)(L)1.

[24]Complaint ¶ 77.

[25]Complaint ¶ 84.

Regulation 15 CSR 30-51.172(1)(L)1 refers to "[c]ompensation arrangements connected with advisory services to clients which are in addition to compensation from those clients for such services[.]" Even if Coleman did not make written disclosure of his role as the president of CLFG, this does not establish a violation of Regulation 15 CSR 30-51.172(1)(L)1. The PPM fully disclosed Coleman's compensation arrangement to Parker. Coleman also made oral disclosure to Parker of the fact that he was the president of CLFG. We find no dishonest or unethical business practices under Regulation 15 CSR 30-51.172(1)(L)1.

Summary

Respondents' investment advisor and investment advisor representative registrations are not subject to discipline.

SO ORDERED on September 13, 2010.

____
NIMROD T. CHAPEL, JR.
Commissioner