UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3379/ February 28, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14654

In the Matter of DONALD ANTHONY WALKER YOUNG, a/k/a D.A. WALKER YOUNG and ACORN CAPITAL MANAGEMENT, LLC

ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS BY DEFAULT

Background

On December 7, 2011, the Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings (OIP), pursuant to Sections 203(e) and (f) of the Investment Advisers Act of 1940 (Advisers Act), alleging that on April 12, 2011, Respondents were enjoined from future violations of Section 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act), Exchange Act Rule 10b-5, and Sections 204, 206(1), (2), and (4) of the Advisers Act in SEC v. Young, No. 09-cv-01634 (E.D. Pa.). The OIP also alleges that on July 20, 2010, Donald Anthony Walker Young (Young) pled guilty to one count of mail fraud and one count of money laundering in United States v. Young, Crim. No. 10-199 (E.D. Pa.), a related proceeding.1 On May 5, 2011, Young was sentenced to seventeen and one half years in prison, Young obtained more than $95 million from his investors among other things.

Young received the OIP at a federal correctional institution (FCI) in Jesup, Georgia, on December 21, 2011. Respondents' Answers were due twenty days from the date of service. See OIP at 3; 17 C.F.R. § 201.220(b). On January 4, 2012, counsel for the Court-Appointed Receiver in SEC v. Young informed me that he did not object to the relief sought by the Division of Enforcement (Division) and that he did not intend to participate in this proceeding.

At a January 9, 2012, prehearing conference, Young stated that he did not intend to file an Answer or contest the allegations in the OIP, and that he preferred to sign Offers of Settlement. Prehearing Tr. 7-8, 12-13. It was agreed that Respondents would be found in default if the Division did not receive executed Offers of Settlement from Young by January 31, 2012. Prehearing Tr. 13-14; see 17 C.F.R. §§ 201.155(a), .220(f).

On February 1, 2012, the Division filed a letter stating that it had transmitted proposed Offers of Settlement along with a prepaid self-addressed envelope to Young on January 11, 2012, which were received at the FCI in Jesup, Georgia, where Young resides, on January 13, 2012, and that Young had not submitted executed Offers of Settlement to the Division.

Respondents are in default because they have not filed Answers or otherwise defended themselves, and this proceeding is determined against them upon consideration of the record, including the allegations in the OIP, which are deemed true. See 17 C.F.R. §§ 201.155(a), .220(f).

Findings of Fact and Conclusions of Law

Acorn Capital Management, LLC (Acorn Capital), is a Pennsylvania limited liability company that has been registered with the Commission as an investment adviser since 2001. OIP at 1. Young, age forty, and a colleague formed Acorn Capital in 1999, and Young has been its managing member since its inception. Id. In its Form ADV, filed on April 1, 2009, Acorn Capital identified Young as its President, Chief Investment Officer, Chief Compliance Officer, Managing Member and sole owner. Id.

From at least mid-2005, Young, through Acorn Capital, misappropriated more than $23 million from investors buying into limited partnership interests in Acorn II, L.P., (Acorn II), a limited partnership controlled by Respondents. OIP at 2. Respondents operated a Ponzi scheme that used investor funds to pay other investors, and directly stole some of the money to purchase a vacation home and pay Young's personal expenses related to horse ownership and racing, construction, boats, limousines, chartered aircraft, and other luxuries. Id. As a result of their misconduct, on April 12, 2011, Young and Acorn Capital were enjoined from violations of the antifraud provisions of the Securities Act, the Exchange Act, and the Investment Advisers Act. See SEC v. Young, No. 09-cv-01634 (E.D. Pa.).

In a related criminal case, United States v. Young, No. 09-cv-01634 (E.D. Pa.), Young pled guilty on July 20, 2010, to one count of mail fraud and one count of money laundering. The criminal complaint alleged that, from in or about November 1999 through in or about April 2009, Young devised and intended to devise a scheme to defraud in connection with the purchase or sale of Acorn II limited partnership interests. OIP at 2. Young continued to misappropriate investor funds after January 13, 2009, while an SEC examination of the books and records of Acorn Capital was ongoing. United States v. Young, Memorandum at 1, 3. Young, through Acorn Capital, solicited individuals to invest with him by means of materially false and misleading statements, including that investor funds would be invested in well-established large companies. OIP at 2. Young obtained more than $95 million from his investors and, instead of investing all of these funds as promised, Young diverted more than $25 million of investor funds for his own use, purchasing, among other things, luxury homes for himself in Palm Beach, Florida, Coatesville, Pennsylvania, and Northeast Harbor, Maine. OIP at 2.

Because Acorn Capital, a registered investment adviser, and Young, an associated person, have been enjoined from violating the securities laws, the issue is whether it is in the public interest for the Commission to act pursuant to Sections 203(e)(4) and (f) of the Advisers Act, 15 U.S.C. §§ 80b-3(e)(4), (f). Those statutory provisions authorize the Commission to take certain measures against an investment adviser or an associated person where the investment adviser or the associated person has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, if it is in the public interest to do so.

Young's conduct meets all the factors used in making a determination that it is in the public interest for the Commission to issue a sanction. See Christopher A. Lowry, Advisers Act Release No. 2052 (Aug. 30, 2002), 55 S.E.C. 1133, 1141 (citing Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981)). In fact, the evidence is overwhelming that the investing public needs to be protected from Young. Taking more than $95 million from persons by fraudulent means and misappropriating over $25 million for personal uses over a ten-year period was intentional, unlawful conduct that was egregious, continuous, and harmful to investors. Young stated that "It is fairly clear that I have violated the law," but he has shown no remorse, nor given assurance against future violations. Aggravating factors are that Young's actions or inactions delayed Commission efforts to end Respondents' fraud, and he delayed resolution of this proceeding by stating for some time and on the record that he wanted to enter a settlement and then, without explanation, he failed to execute and return the Offers of Settlement to the Division. Deterrence should also be considered in assessing a sanction. See Schield Mgmt. Co., Exchange Act Release No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 862 & n.46.

Finally, antifraud violations have especially serious implications for the public interest and merit severe sanctions. See Michael T. Studer, Exchange Act Release No. 50411 (Sept. 20, 2004), 57 S.E.C. 890, 898, recon. denied, Exchange Act Release No. 50600 (Oct. 28, 2004), aff'd, 148 Fed. Appx. 58 (2d Cir. 2005) (unpublished) (quoting Marshall E. Melton, Advisers Act Release No. 2151 (July 25, 2003), 56 S.E.C. 695, 713).

For all the reasons stated, it is in the interest of the public to revoke the investment adviser registration of Acorn Capital and bar Young from participating in the securities industry as allowed by Section 203(f) of the Advisers Act, except for a bar from association with a municipal advisor or a nationally recognized statistical rating organization. In my view, these collateral bars, added by the Dodd-Frank Wall Street Reform and Consumer Protection Act, signed into law on July 21, 2010, are impermissible in this proceeding because they retroactively attach new consequences to conduct that occurred prior to the statute's enactment.2

Order

I ORDER, pursuant to Section 203(f) of the Investment Advisers Act of 1940, that Donald Anthony Walker Young a/k/a D.A. Walker Young is barred from association with an investment adviser, broker, dealer, municipal securities dealer, or transfer agent.

I FURTHER ORDER, pursuant to Section 203(e) of the Investment Advisers Act of 1940, that the investment adviser registration of Acorn Capital Management, LLC, is revoked.

Brenda P. Murray
Chief Administrative Law Judge

Footnotes

1 I take official notice of rulings in SEC v. Young and United States v. Young. See 17 C.F.R. § 201.323. The Commission's civil action was initiated on April 17, 2009, but was delayed by Young's refusal to disclose information. United States v. Young, Memorandum, May 5, 2011, at 3, 8, 10.

2 The conduct occurred from 1999 through in or about April 2009. I disagree that the prospective application of the bar eliminates the retroactivity concerns. See Landgraf v. USI Film Prods., 511 U.S. 244, 273 (1994).