

INITIAL DECISION RELEASE NO. 255
ADMINISTRATIVE PROCEEDING
FILE NO. 3-11086

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

In the Matter of	:	
	:	
DOUGLAS W. POWELL,	:	INITIAL DECISION
CHARLES D. ELLIOTT, III,	:	August 17, 2004
and RUSSELL S. TARBETT	:	
	:	

APPEARANCES: Leslie Hendrickson Hughes and Thomas D. Carter for the Division of Enforcement, United States Securities and Exchange Commission

Douglas W. Powell, pro se;
Ivan B. Knauer and Michael J. Quinn for Charles D. Elliott, III;
Robert P. Oliver for Russell S. Tarbett

BEFORE: Robert G. Mahony, Administrative Law Judge

INTRODUCTION

The Securities and Exchange Commission (Commission or SEC) initiated this proceeding with an Order Instituting Proceedings (OIP) on April 11, 2003, pursuant to: (1) Sections 15(b)(6) and 21C of the Securities Exchange Act of 1934 (Exchange Act), Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act), and Section 9(b) of the Investment Company Act of 1940 (Investment Company Act), against Respondents Douglas W. Powell (Powell) and Charles D. Elliott, III (Elliott); and (2) Sections 15(b)(6) and 21C of the Exchange Act, against Respondent Russell S. Tarbett (Tarbett).

Elliott and Tarbett filed Answers to the OIP on May 20, 2003. Powell filed his Answer on May 21, 2003. An eight-day hearing was held October 20-24 and 27-29, 2003, in Dallas, Texas. The Division of Enforcement (Division) called eleven witnesses, including the three Respondents. Elliott testified on his own behalf and called five additional witnesses. Powell testified on his own behalf and called no witnesses. Tarbett also testified on his own behalf and

qualified to be the FINOP for Northstar and approved him to assume that role. To qualify as FINOP, he had to register with a broker-dealer. (Tr. 644-45, 678-79, 701.)

Hinckley's responsibility was to determine what DIS could be paid in order to avoid any net capital problems for Northstar. Hinckley never dealt with Elliott on financial issues with respect to Northstar, but Powell did assist Hinckley by prioritizing payments to stay within the net capital requirements. (Tr. 915-17, 981-82, 1017-18.) Hinckley reconciled the bank statements monthly and knew that Powell and Elliott were not taking extra monies out of the Northstar account. Tarbett and Hinckley generally reviewed Northstar financials on a monthly basis. (Tr. 1010-13, 1018-19.) The amounts on the invoices presented to Northstar for payment were based on DIS's cash flow needs to meet the payroll and other expenses it incurred for the benefit of the Dominion Companies and Northstar. There was no allocation of expenses between the Dominion Companies and Northstar. (Tr. 938-40, 970-73.) Ninety percent of Northstar's expenses fell into three categories: commissions, facilities agreement expenses, and federal income taxes. For the period January to April 2000, the commissions amounted to 70 percent of revenue, and the Services Agreement was 15.85 percent.¹⁹ (Tr. 1007-08; TX. 319.)

Laney was hired about six weeks before Powell's and Elliott's Suspension Period ended. Licensed in the securities industry since 1984, she has approximately ten to fifteen years of experience as a FINOP and in compliance matters. On November 30, 1999, she met Powell who spoke to her briefly about her experience. He then brought her to Hinckley to interview for the Northstar compliance officer position. Elliott sat in on the interview for about five minutes and asked her one question about resolving a new time-stamp rule but did not ask anything about her qualifications or discuss job duties. (Tr. 480-84, 523-24.) After Laney interviewed with Hinckley, Powell hired Laney as a DIS employee to replace Mills-Barry as Northstar's compliance officer. (Tr. 168-69.)

Laney served as the compliance officer for Northstar from January 3, 2000, the same day Tarbett acquired ownership, until about April 2001. (Tr. 480-81.) Laney was responsible for filling out and filing amendments to the Form BD, which ultimately required Tarbett's signature. As compliance officer, Laney sometimes signed these filings in Tarbett's absence. (Tr. 499-500, 503-04.) Laney's review of Powell's and Elliott's relationship with DIS and DIS's relationship with Northstar made her "comfortable enough" to certify to the answers she gave on the

¹⁹ Kerry Matticks (Matticks), a staff accountant with the Division, testified as a summary witness for the Division. In preparation for his testimony, he reviewed DIS's and Northstar's financial records. Such records included DIS and Northstar bank records and financial statements, DIS ledgers, and Northstar tax returns. (Tr. 1031.) Some records were missing and he could not account for every document. The summary exhibit notes these as "unknown item." The exhibit categorizes monies that left DIS's bank account during the time period at issue. (Tr. 1033, 1038-39; DX. 126, 127, 128, 147, 169.) At the hearing, Elliott and Tarbett moved to strike Matticks's testimony and Division Exhibits 128 and 169. They argue that his testimony and the schedules he created are based on Hinckley's memory and Hinckley was basically guessing as to which expenses and employees were attributable to Northstar. They object on the additional grounds that Matticks construed the Services Agreement as one for expense reimbursement as opposed to one for fees. I sustain the motion to strike Matticks's testimony and Division Exhibits 128 and 169 on the grounds proffered. (Tr. 932, 1011, 1214, 1224.)