INITIAL DECISION RELEASE NO. 482
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15036

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

In the Matter of	:	INITIAL DECISION
	:	February 13, 2013
ALERO ODELL MACK, JR.	:	

APPEARANCES: Sam S. Puathasnanon and Payam Danialypour for the Division of Enforcement, Securities and Exchange Commission

Alero Odell Mack, Jr., pro se

BEFORE: Cameron Elliot, Administrative Law Judge

Summary

This Initial Decision grants the Motion for Summary Disposition (Motion) filed by the Division of Enforcement (Division), denies the Motion to Dismiss Administrative Proceeding (Cross Motion) filed by Alero Odell Mack, Jr. (Mack) [1], and permanently bars him from association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, and nationally recognized statistical rating organization (NRSRO).

Procedural Background

The Securities and Exchange Commission (Commission) issued its Order Instituting Administrative Proceedings (OIP) on September 19, 2012, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that on August 7, 2012, the United States District Court for the Central District of California (Court) entered a final judgment against Mack in SEC v. Mack, No. CV 10-8383 DSF (PJWx) (Underlying Action), permanently enjoining him 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) and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. OIP, pp. 1-2. The OIP also alleges that the Commission's complaint filed in the Underlying Action alleges that Mack raised approximately $4 million from at least twenty-five investors in California and Arizona through various fraudulent investment schemes involving the offer and sale of securities. Id., p. 2.

[1] Mack's Cross Motion is treated as a cross motion for summary disposition.

Mack was served with the OIP on September 24, 2012. See 17 C.F.R. § 201.141(a)(2)(i). In Orders dated October 17 and November 14, 2012, Mack was ordered to show cause by November 1, 2012, why he should not be deemed in default and have the proceeding determined against him and to file his Answer to the OIP by November 28, 2012, respectively. See 17 C.F.R. §§ 201.155(a)(2), .220(f). Mack filed a response to the Order to Show Cause on October 31, 2012, and this Office received his Answer to the OIP dated November 19, 2012.

A prehearing conference was held on December 12, 2012, at which the parties were granted leave to file motions for summary disposition pursuant to Rule 250(a) of the Commission's Rules of Practice. On December 17, 2012, the Division filed its Motion and Declaration of Sam S. Puathasnanon with Exhibits 1 through 4 attached (Div. Ex. 1 through Div. Ex. 4)[2] and Mack filed a Cross Motion. On January 18, 2013, the Division filed an Opposition to the Cross Motion (Division's Opposition) and on January 29, 2013, it filed a Reply Brief (Reply) in support of its Motion. Mack did not file an opposition to the Division's Motion or a reply to the Division's Opposition. Briefing is now complete.

Summary Disposition

A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b). The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noticed pursuant to Rule 323 of the Commission's Rules of Practice. 17 C.F.R. § 201.250(a).

The Commission has repeatedly upheld use of summary disposition in cases such as this, where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction. See Jeffrey L. Gibson, Exchange Act Release No. 57266 (Feb. 4, 2008), 92 SEC Docket 2104, 2111-12 (collecting cases), petition for review denied, 561 F.3d 548 (6th Cir. 2009). Under Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate "will be rare." See John S. Brownson, Exchange Act Release No. 46161 (July 3, 2002), 55 S.E.C. 1023, 1028 n.12, petition for review denied, 66 F. App'x 687 (9th Cir. 2003).

In his Answer, Mack, among other things: (1) challenges the finality of the Court's judgment in the Underlying Action citing his right to vacate or modify the judgment in the Underlying Action; (2) denies that the acts and omissions alleged by the Commission were the

[2] Div. Ex. 1 is the August 7, 2012, Order Granting Plaintiff's Motion for Summary Judgment in the Underlying Action. Div. Ex. 2 is the August 7, 2012, Final Judgment of Permanent Injunction and Other Relief Against Mack in the Underlying Action. This exhibit appears to be missing page two, which I was able to obtain from the Public Access to Court Electronic Records (PACER) database. Div. Ex. 3 is the October 12, 2012, Order by the United States Court of Appeals for the Ninth Circuit dismissing Mack's Appeal for failure to pay the docketing/filing fee. Div. Ex. 4 is Mack's Answer to the OIP filed in this proceeding.

result of his fraudulent activity; and (3) argues that the judgment in the Underlying Action is excessive and resulted from incompetent assistance of paralegals and his attempt to defend the proceeding pro se. Answer, pp. 2, 3.

I note that if the underlying injunction is vacated, Mack may request the Commission to reconsider any sanctions imposed in this administrative proceeding. See Charles Phillip Elliott, Exchange Act Release No. 31202 (Sept. 17, 1992), 52 SEC Docket 2011, 2017 n.17, aff'd on other grounds, 36 F.3d 86 (11th Cir. 1994). Barring that, it is well settled that the findings and conclusions made in an underlying action are immune from attack in a follow-on administrative proceeding. See Phillip J. Milligan, Exchange Act Release No. 61790 (Mar. 26, 2010), 98 SEC Docket 26791, 26796-97; Ted Harold Westerfield, Exchange Act Release No. 41126 (Mar. 1, 1999), 54 S.E.C. 25, 32 n.22 (collecting cases). The Commission does not permit a respondent to relitigate issues that were addressed in a previous proceeding against the respondent. See William F. Lincoln, Exchange Act Release No. 39629 (Feb. 9, 1998), 53 S.E.C. 452, 455-56.

In his Cross Motion, Mack makes two procedural arguments: (1) the Division issued the OIP more than two years after it provided him with a Wells Notice when a 180-day statute of limitations existed for instituting these proceedings; and (2) the Commission does not have authority to "obtain a civil judgment, then follow that with an administrative proceeding to impose further punishment on this respondent." Cross Motion, pp. 2-3. The Division maintains that Respondent is mistaken because: (1) Section 4E of the Exchange Act only requires that the Division institute an action within 180 days of the Wells Notice, which it argues it did by filing the civil action against Mack in the Underlying Action; and (2) the Division is authorized to bring this proceeding and seek additional sanctions by Section 203(f) of the Advisers Act. Division's Opposition, p. 2. Accordingly, the Division contends that there are no issues of material fact remaining in this proceeding; Mack willfully violated certain federal securities laws; and as a result of his misconduct and the judgment by the Court in the Underlying Action, it is entitled to summary disposition. Motion, pp. 1-3, 12.

Mack's arguments are lacking in merit. Section 4E of the Exchange Act requires the Commission to institute an action within 180 days of issuance of a Wells Notice. 15 U.S.C. § 78d-5. Mack does not dispute that he received the Wells Notice in May 2010 and the Underlying Action was filed against him in November 2010, within 180 days. Cross Motion, p. 2. But the Underlying Action and the present action are two distinct proceedings before two distinct tribunals. There is no evidence that a Wells Notice for the present proceeding ever issued, nor is there any authority for the proposition that the May 2010 Wells Notice applies to the present proceeding, as opposed to the Underlying Action.

The Commission plainly has authority to obtain a civil judgment and thereafter seek administrative relief. Indeed, Section 203(f) of the Advisers Act instructs the Commission to sanction persons such as Mack who have been civilly enjoined from any action, conduct, or practice specified in Section 203(e)(4) if the sanction is in the public interest. 15 U.S.C. § 80b-3(e), (f).

Accordingly, there is no genuine issue with regard to any material fact, and this proceeding may be resolved by summary disposition pursuant to Rule 250 of the Commission's Rules of Practice. 17 C.F.R. § 201.250.

The findings and conclusions in this Initial Decision are based on the record and on facts officially noticed pursuant to Rule 323 of the Commission's Rules of Practice.[3] See 17 C.F.R. § 201.323. Mack's Answer and the parties' motion papers and all documents and exhibits of record have been fully reviewed and carefully considered. Preponderance of the evidence has been applied as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 101-04 (1981). All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision have been considered and rejected.

Findings of Fact

Mack is a resident of Los Angeles, California.[4] Complaint, p. 3; Answer to Complaint, p. 3.[5] From at least January 2007 through at least March 2010 (Relevant Period), Mack held a Series 65 License. Commission's First Set of Requests for Admission to Mack (Admission Requests), p. 3; Complaint, pp. 3-4; Answer to Complaint, p. 3.[6] At no time was he registered with the Commission in any capacity. Complaint, pp. 3-4; Answer to Complaint, p. 3.

During the Relevant Period, Mack owned, managed, and controlled at least Easy Equity Asset Management, Inc. (EEAM), Easy Equity Partners, L.P. (EEP), Easy Equity Management, L.P. (EEM), Alero Equities The Real Estate Company, L.L.C. (AREC), and Alero I.X. Corporation (AIX), (collectively, Easy Equity).[7] Admission Requests, pp. 2-3. The Easy Equity entities served as Mack's alter ego. Id., p. 5. Beginning on April 3, 2008, EEM was registered in California as an investment adviser. Id., pp. 3-4.

[3] Public official records filed in the Underlying Action are available on PACER.

[4] Mack filed a Notice of Change of Address dated October 31, 2012, requesting that all communications in this matter be sent to a post office box in Carson, California.

[5] The Complaint and Answer to Complaint were filed with the Court on November 4, 2010, and June 20, 2011, respectively, in the Underlying Action. Both documents are available on PACER.

[6] In its August 7, 2012, Order granting the Commission's motion for summary judgment, the Court deemed the matters in the Admission Requests admitted because Mack did not respond to them. Div. Ex. 1, p. 1. Although the Admission Requests are not themselves findings of fact, they are the basis of the Court's final judgment in the Underlying Action and I rely upon them as the factual basis for this proceeding, among other evidentiary items.

[7] There is evidence that Mack owned, managed, and controlled additional entities; however, these are the only entities named in the OIP. Admission Requests, p. 1; OIP, p. 1.

During the Relevant Period, Mack acted as an investment adviser and, along with other individuals, recruited at least twenty-five investors to invest in multiple Easy Equity programs, under the generic Easy Equity, as well as the EEAM, EEP, AREC, and AIX labels. Id., p. 5, 13. He commingled investor funds received in different offerings among various bank and brokerage accounts that he controlled. Id., p. 5; Div. Ex. 1, p. 4. Mack controlled all aspects of Easy Equity, including the disbursement of the investor proceeds from all Easy Equity investment offerings. Admission Requests, p. 5; Div. Ex. 1, p. 3.

Throughout the Relevant Period, Mack solicited and sold investments in various Easy Equity programs. Mack solicited and sold investments to unsophisticated investors who resided in California and Arizona. Admission Requests, pp. 9, 14-17. He sold at least $1.4 million of preferred stock in EEAM to investors from January 2007 through June 2009. Id., pp. 3, 5. In 2008, he offered and sold at least $850,000 of interests in AREC to investors, and from 2008 through March 2010, Mack sold approximately $1.7 million of interests in EEP to investors. Id., p. 6. Mack encouraged current investors to recruit new investors from among their family, friends, and co-workers. Id. p. 8. Current investors received a commission of between 0.25% to 5% of the principal amount invested by those they recruited. Id. Commissions paid to investors who recruited others were recorded as "consultancy" fees, dividends, or commissions on the books of Easy Equity. Id. The commissions paid to current investors for recruiting others were paid from new investors' capital. Id.

Throughout the Relevant Period, Mack made numerous false and misleading statements relating to the various Easy Equity offerings and investments, including, but not limited to, the following. He represented in written materials that Easy Equity consistently achieved positive returns. Admission Requests, p. 9. In fact, the returns advertised to investors were substantially in excess of the net returns actually realized, after fees and other expenses. Admission Requests, p. 9; Div. Ex. 1, p. 2. The returns to investors from EEP were as low as negative twenty-six percent (-26%). Admission Requests, p. 9. Mack provided investors with a brochure stating that Steven Enrico Lopez, Sr. (Lopez), had "a proven track record of constant returns of more than 30% yearly with zero losses." Id. p. 10; Declaration of Payam Danialypour (Danialypour Decl.)[8], Exhibit 4, p. 11. This representation was in fact false. Admission Requests, p. 10. In 2010, Mack offered an investment called the "Chase 1 Day Private Placement Platform Program" (Chase Program). Id., p. 7. He represented to potential investors that an investment in the Chase Program would result in the purchase of a U.S. Treasury obligation that would be repurchased by the bank and produce a 100% return in only one day. Id. In fact, no Chase Program actually existed and Mack did not have access to a program wherein a U.S. Treasury obligation could be purchased then repurchased by a bank thereby producing a 100% return in one day. Id.

[8] Danialypour Decl. Exhibits 3 and 4 were attachments to the Admission Requests. Admission Requests, p. 17; Danialypour Decl., p. 1. The Admission Requests asked Mack to admit that Danialypour Decl. Exhibits 3 and 4 were genuine and reports of regularly conducted activity, and therefore they are deemed part of the record relied on by the Court in the Underlying Action. Admission Requests, p. 17.

During the Relevant Period, Mack misrepresented his background and the operations of Easy Equity to investors. Admission Requests, p. 12. Among other things, Mack falsely described himself to investors as having been a "funding partner with JPMorgan Securities, Inc., in New York City." Id., p. 11; Danialypour Decl., Exhibit 4, p. 10. In fact, he has never been a "funding partner" with JPMorgan Securities, Inc. Admission Requests, p. 13. In a marketing brochure provided to investors, Mack claimed to be a "real estate broker," in fact, he did not have a real estate broker's license and had only ever held a real estate salesperson license, which had been partially revoked. Admission Requests, p. 12; Danialypour Decl., Exhibit 4, p. 10.

Also, Mack misled investors regarding the use of their funds. Admission Requests, p. 11; Div. Ex. 1, pp. 2, 5. Only approximately $1.3 million of the $4 million of investor funds that he raised through the Easy Equity programs was actually invested in securities. Admission Requests, p. 11. Mack used investor funds for office expenses and personal purposes. Admission Requests, p. 12; Div. Ex. 1, p. 2. In fact, $503,194 of investor funds were distributed to Mack or used to pay his personal expenses. Admission Requests, p. 12; Declaration of Nina Y. Yamamoto (Yamamoto Decl.)[9], pp. 6-7.

Legal Conclusions

In relevant part, Section 203(f) of the Advisers Act instructs the Commission to impose sanctions on any person who, at the time of the misconduct, was associated with an investment adviser, if the Commission finds that the sanction is in the public interest and the person has been enjoined from engaging in or continuing any act, conduct, or practice in connection with the purchase or sale of any security. See 15 U.S.C. § 80b-3(e)(4), (f).

At the time of his underlying misconduct, Mack was associated with investment adviser EEM[10], and he was acting as an investment adviser in connection with selling securities in Easy Equity.[11] Admission Requests, pp. 2-4, 13; Div. Ex. 1, p. 4. A final judgment was issued, permanently enjoining him from future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. Accordingly, a sanction shall be imposed on Mack, if it is in the public interest. See Teicher v. SEC, 177 F.3d 1016, 1017-18 (D.C. Cir.

[9] In its final judgment, the Court in the Underlying Action held Mack liable for disgorgement of $1,079,879. Div. Ex. 2, p. 4. This amount, as evidenced by the calculation in Yamamoto Decl., represents the $503,194 distributed to Mack and the $576,685 distributed to Lopez or used to pay their personal expenses. Yamamoto Decl., pp. 6-7. I conclude that the Court necessarily relied on the calculations in the Yamamoto Decl. in determining its sanctions, and to that extent they may not now be collaterally challenged.

[10] EEM was registered as an investment adviser with the State of California since April 3, 2008. Admission Requests, p. 3-4.

[11] Advisers Act Sections 202(a)(11), (17) define an investment adviser as "any person who, for compensation, engages in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities" and an associated person as any officer or controlling person of an investment adviser. 15 U.S.C. § 80b-2(a)(11), (17).

1999) (holding that the Commission has authority to bar unregistered persons from association with registered or unregistered investment advisers or otherwise sanction them under Section 203 of the Advisers Act).

Sanctions

The Division contends that Mack should be permanently barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or NRSRO. Motion, pp. 1, 7-8, 12. Mack disagrees that remedial action is appropriate in the public interest against him and states that the proposed sanctions sought by the Division are excessive in relation to his true conduct. Answer, pp. 2-3, 4.

The appropriateness of any remedial sanction in this proceeding is guided by the well-established public interest factors set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). See Joseph P. Galluzzi, Exchange Act Release No. 46405 (Aug. 23, 2002), 55 S.E.C. 1110, 1120. They include: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood of future violations. Steadman, 603 F.2d at 1140.

Mack's conduct was egregious. Over a period of a little more than three years, he, with the assistance of others, solicited investors in Easy Equity and raised approximately $4 million through various fraudulent investment schemes. Admission Requests, pp. 1-8, 11; Div. Ex. 1, p. 5. Only approximately $1.3 million of the $4 million of investor funds that he raised were actually invested in securities. Admission Requests, p. 11. Mack also encouraged current investors to recruit new investors to participate in his fraudulent scheme. Id., p. 8. The egregiousness of Mack's conduct is further demonstrated by the Court's entry of a permanent injunction and its order that Mack pay $1,079,879 representing ill-gotten gains, prejudgment interest of $58,905.32, and a civil penalty in the amount of $150,000. Div. Ex. 2, p. 4; See Don Warner Reinhard, Exchange Act Release No. 63720 (Jan. 14, 2011), 100 SEC Docket 36940, 36947 & n.21 (citing Robert Bruce Lohmann, Exchange Act Release No. 48092 (June 26, 2003), 56 S.E.C. 573, 583 n.20 (finding that matters "not charged in the OIP" may nevertheless be considered "in assessing sanctions")).

Mack acted with scienter and his conduct was recurrent, with his misconduct beginning as early as January 2007 and continuing through approximately March 2010. Admission Requests, p. 3; Complaint, p. 3; Answer to Complaint, p. 3; Div. Ex. 1, p. 3. Mack controlled Easy Equity and disbursed investor proceeds. Div. Ex. 1, p. 3. He repeatedly, and knowingly, made blatantly false representations about facts he had particular knowledge of, including, but not limited to, his own qualifications and use of investor funds. Div. Ex. 1, pp. 3, 5. As the one in control of Easy Equity, including the disbursement of investor proceeds, it is clear that he knowingly caused investor funds to be withdrawn from Easy Equity accounts and used them for personal and office expenses.

Mack has not offered assurances against future violations or recognized the wrongful nature of his conduct. Indeed, Mack did not address the Steadman factors in his Cross Motion and failed to file an opposition to the Division's Motion. Rather, Mack seeks to place blame for the underlying misconduct on Lopez, who he claims "'duped' [him] into entering securities arena [sic]." Cross Motion, p. 2; Answer, p. 3. In assessing its ruling in the Underlying Action, the Court found that "Mack has provided no recognition that his conduct was wrongful, and no assurances against future violations." Div. Ex. 1, p. 5.

Mack's current occupation is unknown. Although he is bound by the terms of the permanent injunction imposed on him by the Court in the Underlying Action, his repeated violations of the federal securities laws for the benefit of himself, and at the expense of others, strongly suggest that further deterring his ability to reenter or participate, in any capacity, in the securities industry is in the public interest.

In short, every Steadman factor weighs in favor of a heavy sanction. The Division requests that Mack be collaterally barred in accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). Motion, pp. 1, 7-9. Dodd-Frank, enacted on July 21, 2010, added collateral bar sanctions to Section 203(f) of the Advisers Act. The new sanctions authorize the Commission to simultaneously suspend or bar an individual who has engaged in certain unlawful conduct from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or NRSRO. Prior to Dodd-Frank, collateral sanctions were generally authorized only on a piecemeal basis, i.e., only when an individual sought association with the particular branch of the securities industry at issue. See generally Hector Gallardo, Exchange Act Release No. 65422 (Sept. 28, 2011) 102 SEC Docket 46308, 46312-15 (discussing Dodd-Frank's collateral bar provisions).

Mack's fraudulent misconduct occurred prior to the enactment of Dodd-Frank, and Dodd-Frank does not explicitly state whether its collateral bar provision may be applied in cases where the conduct occurred prior to the statute's enactment. However, the Commission has held that Dodd-Frank's collateral bars "are prospective remedies whose purpose is to protect the investing public from future harm," and therefore applying the bars in a follow-on proceeding addressing pre-Dodd-Frank conduct is "not impermissibly retroactive." John W. Lawton, Advisers Act Release No. 3513 (Dec. 13, 2012). Accordingly, the Division's request for a collateral bar will be granted, and Mack will be barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, and NRSRO.

Ruling

It is ORDERED, pursuant to Rule 250(b) of the Securities and Exchange Commission's Rules of Practice, that the Division of Enforcement's Motion for Summary Disposition against Respondent Alero Odell Mack, Jr., is GRANTED, and Alero Odell Mack, Jr.'s Cross Motion is DENIED.

It is FURTHER ORDERED, pursuant to Section 203(f) of the Investment Advisers Act of 1940, that Alero Odell Mack, Jr., is barred from association with an investment adviser,

broker, dealer, municipal securities dealer, municipal advisor, transfer agent, and nationally recognized statistical rating organization.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice. See 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice. See 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct manifest error of fact.

The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occurs, the Initial Decision shall not become final as to that party.

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Cameron Elliot
Administrative Law Judge