INITIAL DECISION RELEASE NO. 498
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15155

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

In the Matter of	:	INITIAL DECISION
	:	July 24, 2013
JEFFREY A. LISKOV	:	

APPEARANCES: Deena R. Bernstein and Naomi J. Sevilla for the Division of Enforcement, Securities and Exchange Commission

Albert P. Zabin and Jennifer L. Mikels of Duane Morris LLP for Jeffrey A. Liskov

BEFORE: Cameron Elliot, Administrative Law Judge

Summary

This Initial Decision grants the Division of Enforcement's (Division) Motion for Summary Disposition against Respondent Jeffrey A. Liskov (Liskov) (Motion) and permanently bars him from associating with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Procedural Background

The Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) in this proceeding on December 27, 2012, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that on December 12, 2012, the United States District Court for the District of Massachusetts entered a final judgment against Liskov in SEC v. EagleEye Asset Management, LLC, No. 11-CV-11576, permanently enjoining him from future violations of Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder and Sections 204, 206(1), and 206(2) of the Advisers Act and various provisions under Rule 204-2 thereunder. OIP, p. 1; Answer, p. 1.[1] The court

[1] Liskov was served with the OIP on January 4, 2013. On January 17, 2013, Liskov filed a joint Answer with his affiliate investment adviser EagleEye Asset Management, LLC (EagleEye), and on January 25, 2013, he filed a new, separate Answer. There were no substantive differences between

ordered Liskov, jointly and severally, with EagleEye, to pay disgorgement of $301,502.26, plus prejudgment interest of $29.603.59, and to pay, severally, a civil penalty of $725,000. OIP, p. 2; Answer, p. 1.

A prehearing conference was held on January 31, 2013, attended by counsel for both Liskov and EagleEye. At the prehearing conference, the parties were granted leave to file motions for summary disposition, pursuant to Rule 250(a) of the Commission's Rules of Practice. On February 22, 2013, the Division filed its Motion and Appendix in Support of its Motion, attaching the Declaration of Deena R. Bernstein (Bernstein Decl.) with Exhibits A through E.[2] On March 8, 2013, Liskov filed a Brief and Partial Opposition to the Division's Motion (Opposition), which included Exhibits A and B (Resp. Ex.).[3] On March 18, 2013, the Division filed a Reply Brief (Reply) and Appendix in Support of Reply with a second Declaration of Bernstein (Bernstein Reply Decl.) with Exhibits A through D.[4]

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 Liksov's pleadings are taken as true, except as modified by stipulations or admissions made by him, by uncontested affidavits, or by facts officially noticed pursuant to Rule 323 of the Commission's Rules of Practice. See 17 C.F.R. §§ 201.250(a), .323.

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.

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the January 17 and January 25 Answers, but to avoid any confusion from their differing pagination, I refer only to the latter as the Answer.

[2] Bernstein Decl., Ex. A is the September 8, 2011, Complaint filed in the underlying action; Bernstein Decl., Ex. B is the jury verdict form filed in the underlying action; Bernstein Decl., Ex. C is an excerpt of the November 16, 2012, daily transcript of evidence, motion hearing, and jury charge conference in the underlying action; Bernstein Decl., Ex. D is the transcript of the December 11, 2012, remedies hearing in the underlying action; and Bernstein Decl., Ex. E is the final judgment entered by the court in the underlying action.

[3] Resp. Ex. A is a collection of copies of publications relating to the jury verdict in the underlying action; Resp. Ex. B is an excerpt of the transcript from the trial in the underlying action.

[4] Bernstein Reply Decl., Ex. A is an excerpt of the November 26, 2012, daily transcript of jury instructions, closing arguments, and verdict in the underlying action; Bernstein Reply Decl., Ex. B is a timeline of key events prepared by the Division; Bernstein Reply Decl., Ex. C is the stipulated facts in the underlying action; Bernstein Reply Decl., Ex. D is an excerpt of the November 14, 2012, daily transcript of evidence in the underlying action.

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, 55 S.E.C. 1023, 1028 n.12 (2002), petition for review denied, 66 F. App'x 687 (9th Cir. 2003).

Liskov admits that the court in the underlying action entered a final judgment against him, issued injunctions against him, and ordered disgorgement and civil penalties. Answer, p. 1. 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. See 17 C.F.R. § 201.323. Liskov'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

From at least April 2008 through August 2010, Liskov was the sole owner, officer, and employee of EagleEye, an investment adviser that registered with the Commission on April 9, 2008. Answer, p. 1; Bernstein Reply Decl., Ex. C, p. 1.[5] Liskov and EagleEye owed a fiduciary duty to their investment advisory clients, and Liskov admitted failure to fulfill those fiduciary duties. Bernstein Decl., Ex. D, p. 29; Bernstein Reply Decl., Ex. C, p. 1; Opposition, pp. 2, 7. Liskov operated EagleEye from his home in Plymouth, Massachusetts. Bernstein Reply Decl., Ex. C, p. 1.

Beginning in 2008 and continuing through 2010 (Relevant Period), Liskov advised EagleEye clients Peter and Judith Starrett (Starretts), Steven Bodi (Bodi), John Striano (Striano), Gordon Smith (Smith), and Neil McLaughlin (McLaughlin) to open foreign currency exchange (forex) trading accounts in FXCM, LLC (FXCM), an online retail currency firm, and to liquidate investments in securities and invest in forex. Bernstein Reply Decl., Ex. C, pp. 1-3.

The Starretts, Bodi, Striano, Smith, and McLaughlin each executed limited power of attorney forms, authorizing Liskov to conduct trading in their FXCM accounts. Bernstein Reply Decl., Ex. C, p. 2. In accordance with the limited power of attorneys, EagleEye could collect performance fees on net profits in client FXCM accounts. Id. The Starretts, Bodi, Striano, Smith, and McLaughlin invested $270,000, $26,000, $130,000, $100,000, and $285,000 in their FXCM accounts, respectively. Id., pp. 2-3. During the Relevant Period, Liskov lost substantially all of the Starretts', Bodi's, Striano's, Smith's, and McLaughlin's forex investments. Id. Prior to the losses, Liskov collected performance fees from all but McLaughlin's accounts. Id.

[5] Bernstein Reply Decl., Ex. C was accepted by the court and jury as undisputed evidence in the underlying action. Bernstein Reply Decl., Ex. A, p. 8.

Another EagleEye client, Patricia Stott (Stott), who had preexisting brokerage accounts, authorized the opening of two FXCM accounts, collectively investing $1 million. Id, pp. 3-4. Liskov opened three additional, unauthorized, FXCM accounts in Stott's name in February 2010, May 2010, and June 2010 by altering documentation used to open her second, authorized, FXCM account. Id.

In October 2009, Stott opened a new brokerage account. Id., p. 4. Using prior transfer request forms and whiteout to change certain information, Liskov transferred a total of $2.9 million from Stott's preexisting brokerage accounts into her new brokerage account, over the course of seven months. Id., p. 5. During the same time span, Liskov transferred $2.9 million from the new brokerage account into Stott's FXCM accounts by altering prior transfer request forms and faxing them as new requests. Id., p. 6. In July 2010, Liskov opened an account in Stott's name at Deutsche Bank's forex trading platform (dbFX), signing her name without authorization. Id. After opening the dbFX account, Liskov altered prior transfer requests to transfer $800,000 from her preexisting brokerage accounts into her new brokerage account. Liskov then transferred the $800,000 into Stott's dbFX account without authorization. Id.

The jury in the underlying action returned a verdict against Liskov and EagleEye finding that they intentionally or recklessly made material misrepresentations to the Starretts, Striano, Smith, McLaughlin, and Stott in violation of the Advisers Act. Bernstein Decl., Ex. B. The jury further found that Liskov and EagleEye violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by intentionally or recklessly making material misrepresentations in connection with the purchase or sale of securities to the Starretts, Striano, Smith, and Stott, by intentionally or recklessly failing to disclose Liskov's forex trading track record to them, and by intentionally engaging in a scheme to defraud them. Id. The jury found that Liskov and EagleEye did not violate these securities laws with respect to Bodi. Id.

Conclusions of Law

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.

Liskov, who was associated with investment adviser EagleEye at the time of his misconduct, is enjoined from violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 204, 206(1), and 206(2) of the Advisers Act and various provisions of Rule 204-2 thereunder, meeting the prerequisite for sanctions pursuant to Advisers Act Sections 203(e)(4) and (f). Answer, p. 1; Bernstein Decl., Ex. E. The injunction was a result of Liskov having been found liable for violating the Exchange Act and Rule 10b-5 thereunder and the Advisers Act and rules thereunder. Bernstein Decl., Exs. B, E.

Accordingly, a sanction shall be imposed on Liskov if it is in the public interest. See Teicher v. SEC, 177 F.3d 1016, 1017-18 (D.C. Cir. 1999) (holding that the Commission has

authority to bar 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 Liskov should be permanently barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. Motion, p. 9.

Liskov, in his Opposition, did not contest the Division's entitlement to summary disposition and the imposition of some additional non-monetary sanctions, but argued that any associational bar should be limited to work where he could handle other people's money and/or limited to five years or less. Opposition, pp. 1, 8. Such a limited bar would be appropriate, according to Liskov's Opposition, because, due to the underlying action and parallel proceedings: (1) Liskov is financially ruined; (2) the Division achieved its deterrence goals by avidly publicizing the underlying action and its victory; (3) Liskov has few marketable skills other than those applicable to the financial services industry and, thus, he would be unable to pay any significant portion of the disgorgement and civil penalties without being allowed to continue in the industry; and that (4) Liskov's actions were not egregious and amounted to little more than breaches of his fiduciary duties to clients. Opposition, pp. 1-2, 8.[6]

The appropriateness of any remedial sanction in this proceeding is guided by the 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, 55 S.E.C. 1110, 1120 (2002). 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 factors). Gary M. Kornman, Advisers Act Release No. 2840 (Feb. 13, 2009), 95 SEC Docket 14246, 14255, pet. denied, 592 F.3d 173 (D.C. Cir. 2010). The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive. Id.

The Steadman factors weigh in favor of imposing a permanent bar. Liskov's conduct was egregious and recurrent as evidenced by the jury findings in the underlying action. Bernstein Decl., Ex. B. Liskov caused approximately $3.7 million of Stott's money to be transferred without authorization into and out of the various accounts he opened through deceptive practices, including by altering documents and signing her name without authorization. He engaged in a scheme to defraud multiple investors over a period of approximately two years, inducing at least four investors to make forex investments in accounts controlled by him,

[6] The majority of the Opposition focuses on Respondent's grievances with the jury's assessment of the evidence from the trial in the underlying action and engages in post-hoc criticism of the Division's arguments to the jury, rather than expounding upon the above-listed reasons for deserving a lesser sanction. Respondent's arguments are, in essence, attempts to re-litigate the underlying case, which are not appropriate in a follow-on administrative action. See, e.g., John W. Lawton, Advisers Act Release No. 3513 (Dec. 13, 2012), 105 SEC Docket 61722, 61728.

resulting in a loss of substantially all of their investments. Id.; Bernstein Reply Decl., Ex. C, pp. 4-6.

The jury found that Liskov's conduct was scienter based and not merely negligent. Bernstein Decl., Ex. B. The level of scienter found in the underlying action is unclear; the jury did not make a special finding, and the court simply noted that Liskov acted "fraudulently." Bernstein Decl., Ex. D, at 31:15. However, the use of altered documents and forged signatures indicates a high level of scienter. Bernstein Reply Decl., Ex. C, pp. 5-6.

Liskov has offered no assurances against future violations and has not fully recognized the wrongful nature of his conduct. Though Liskov recognizes that his actions included "inexcusable breaches of the duties of due care that a fiduciary owes to his clients," he undermines that concession by stating that he "continues to deny the Commission's allegations." Opposition, p. 2; Answer, p. 1. Similarly, during the remedies hearing in the underlying action, Liskov stated that he "did not try to mislead [his clients] and [he] did not feel at the time that they were being misled." Bernstein Decl., Ex. D at 29.

Liskov's failure to understand that his actions were wrongful is troubling and makes it difficult to accept any assurances that he would avoid misleading future clients. Although he is bound by the terms of the permanent injunction, Liskov continues to have unimpeded access to the securities industry. His deceptive conduct, repeated violations of the federal securities laws, and apparent desire to seek future employment in the securities industry, as evidenced by his request for a reduced sanction in this proceeding, provide an increased likelihood of future violations and strongly suggest that further preventing his ability to reenter or participate, in any capacity, in the securities industry is in the public interest.

Respondent's arguments against the public interest factors, boiled down, are that the only wrongdoing by Liskov and EagleEye was a failure to inform clients of Liskov's poor trading record, a non-egregious breach of fiduciary duty, and that the Division's case was predicated on a single, one-off, scheme, and thus the behavior could not be deemed recurring. Opposition, pp. 3-6. The latter argument was supported only by a fragmented excerpt from the Division's closing arguments to the jury in the underlying action. Id., pp. 5-6. These arguments ignore Liskov's multiple acts of using unauthorized signatures and document alterations to open new accounts and make fund transfers that the jury considered in rendering its verdict. Bernstein Reply Decl., Ex. C. As is clear from the verdict slip, the jury found Liskov and EagleEye liable for fraudulent statements and acts under both the Advisers Act and the Exchange Act, in addition to its finding of scheme liability under the Exchange Act. Bernstein Decl., Ex. B. Furthermore, EagleEye was found liable for violations of Advisers Act various provisions Rule 204-2. Bernstein Decl., Ex. E.

The Commission also considers the deterrent effect of administrative sanctions. See Schield Management Co., Exchange Act Release No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 862. Securities bars have long been considered by the Commission as effective deterrence. Guy P. Riordan, Exchange Act Release No. 61153 (Dec. 11, 2009), 97 SEC Docket 23445, 23478; Lester Kuznetz, 48 S.E.C. 551, 555 (1986). Liskov argues that deterrence has been achieved through the adverse publicity associated with the underlying action and this proceeding,

mitigating the need for sanctions. Opposition, p. 2. The Commission has considered similar arguments to Liskov's and has found them unpersuasive where the sanction was warranted by the public interest. See, e.g., Kuznetz, 48 S.E.C. at 555. The effect of any adverse publicity against Liskov does not outweigh the public interest factors here, which demonstrate the need for a permanent bar.[7]

The Division requests that Liskov be collaterally barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. Motion, p. 9. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), enacted on July 21, 2010, added collateral bar sanctions to Section 203(f) of the Advisers Act. 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), 105 SEC Docket 61722, 61737. Accordingly, the Division's request for a collateral bar will be granted, and Liskov will be barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, and nationally recognized statistical rating organization.

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 Jeffrey A. Liskov is GRANTED; and

It is FURTHER ORDERED, pursuant to Section 203(f) of the Investment Advisers Act of 1940, that Jeffrey A. Liskov 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.

[7] Liskov's assertion of his dire financial circumstances as another mitigating factor is misplaced. Though inability to pay civil penalties or disgorgement due to financial condition may be considered in fashioning such remedies, there is no analogous consideration in the analysis of whether a bar is appropriate. See 17 C.F.R. § 201.600(a).

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