

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

In the Matter of :
: INITIAL DECISION
GREGORY VIOLA : April 16, 2015

APPEARANCES: Ellen Bober Moynihan and Martin Healey for the
Division of Enforcement, Securities and Exchange Commission

Gregory Viola, *pro se*

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Gregory Viola (Viola) from the securities industry. He was previously convicted of mail fraud.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on November 13, 2014, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The proceeding is a follow-on proceeding based on *United States v. Viola*, No. 3:12-cr-25 (D. Conn), *aff'd*, 555 F. App'x 57 (2d Cir. 2014), *cert. denied*, 190 L. Ed. 2d 389 (2014), in which Viola was convicted, on his plea of guilty, of mail fraud, in violation of 18 U.S.C. § 1341. The Division of Enforcement (Division) filed a motion for summary disposition, pursuant to 17 C.F.R. § 201.250(a), in accordance with leave granted. *Gregory Viola*, Admin. Proc. Rulings Release No. 2142, 2014 SEC LEXIS 4902 (A.L.J. Dec. 17, 2014). Viola timely filed an opposition, and the Division, a reply.

This Initial Decision is based on the pleadings and Viola's Answer to the OIP. There is no genuine issue with regard to any fact that is material to this proceeding. All material facts that concern the activities for which he was convicted were decided against him in the criminal case on which this proceeding is based. Any other facts in his pleadings have been taken as true, pursuant to 17 C.F.R. § 201.250(a). All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

B. Allegations and Arguments of the Parties

The OIP alleges that Viola was convicted of mail fraud in *United States v. Viola*. The Division urges that he be barred from the securities industry. Viola opposes this, arguing that he was wrongly convicted.

C. Procedural Issues

1. Official Notice

Official notice pursuant to 17 C.F.R. § 201.323 is taken of the docket report and the court's orders in *United States v. Viola*.

2. Collateral Estoppel

It is well established that the Commission does not permit criminal convictions to be collaterally attacked in its administrative proceedings. *See Ira William Scott*, Advisers Act Release No. 1752, 1998 SEC LEXIS 1957, at *8-9 (Sept. 15, 1998); *William F. Lincoln*, Securities Exchange Act of 1934 (Exchange Act) Release No. 39629, 1998 SEC LEXIS 193, at *7-8 (Feb. 12, 1998).¹ Nor does the pendency of an appeal does preclude the Commission from action based on a conviction.² *See Joseph P. Galluzzi*, Exchange Act Release No. 46405, 2002 SEC LEXIS 3423, at *11 n.21 (Aug. 23, 2002); *Charles Phillip Elliott*, Exchange Act Release No. 31202, 1992 SEC LEXIS 2334, at *11 (Sept. 17, 1992). If Viola is successful in overturning his conviction, he can request the Commission to vacate any sanctions ordered in this proceeding (or to dismiss the proceeding, if it is still pending).³

¹ Nor does the Commission permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent, whether resolved by consent, by summary judgment, or after a trial. *See Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at *9-11 (Feb. 4, 2008) (injunction entered by consent), *pet. denied*, 561 F.3d 548 (6th Cir. 2009); *John Francis D'Acquisto*, Advisers Act Release No. 1696, 1998 SEC LEXIS 91, at *1-2 & n.1, *7 (Jan. 21, 1998) (injunction entered by summary judgment); *James E. Franklin*, Exchange Act Release No. 56649, 2007 SEC LEXIS 2420, at *11 & nn.13-14 (Oct. 12, 2007) (injunction entered after trial), *pet. denied*, 285 F. App'x 761 (D.C. Cir. 2008); *Demitrios Julius Shiva*, 1997 SEC LEXIS 561, at *5-6 & nn.6-7 (Mar. 12, 1997); *see also Marshall E. Melton*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at *2-10, *22-30 (July 25, 2003).

² Viola's December 1, 2014, Motion for More Definite Statement alluded to a pending Motion to Vacate Sentence pursuant to 28 U.S.C. § 2255. His opposition is based on and includes his March 10, 2015, Amended Motion for New Trial in which he seeks a new trial, or in the alternative, a vacatur of his judgment, based on various facts and Constitutional violations.

³ *See Jilaine H. Bauer, Esq.*, Securities Act of 1933 (Securities Act) Release No. 9464, 2013 SEC LEXIS 3132 (Oct. 8, 2013) (dismissing follow-on administrative proceeding after court of appeals, while petition for review was pending before Commission, reversed and remanded district court's judgment that was basis for OIP); *Richard L. Goble*, Exchange Act Release No. 68651, 2013 SEC LEXIS 129 (Jan. 14, 2013) (dismissing follow-on administrative proceeding after court of appeals, while petition for review was pending before Commission, vacated injunction that was basis for

II. FINDINGS OF FACT

Viola was convicted, on his plea of guilty, of mail fraud, in violation of 18 U.S.C. § 1341, in *United States v. Viola*. *United States v. Viola*, ECF Nos. 28, 71. He was sentenced to 100 months of imprisonment followed by three years of supervised release and ordered to pay \$6,872,633.97 in restitution. *Id.*, ECF No. 71.

In the conduct underlying his conviction, from 2007 to 2011, Viola operated a Ponzi scheme, in which he stole almost \$7 million from people who trusted him to invest their savings, which they could ill afford to lose. *United States v. Viola*, ECF No. 79 at 72-73. There were at least fifty victims. *Id.* at 7-8. Instead of investing the victims' funds, as promised, Viola spent the funds on a lavish lifestyle. *Id.* at 73, 75. He created false account statements in aid of his scheme. *Id.* at 73. Viola displayed a lack of appreciation of the gravity of his conduct when he spoke at his sentencing hearing. *Id.* at 48-50, 74-75. Age 62, Viola was never registered with the State of Connecticut as an investment adviser or with the Commission as in an investment adviser or in any other capacity. Answer at 1.

III. CONCLUSIONS OF LAW

Viola has been convicted “within 10 years of the commencement of [this proceeding]” of a felony or misdemeanor that “involves the violation of section . . . 1341 . . . of title 18, United States Code” within the meaning of Sections 203(e)(2)(D) and 203(f) of the Advisers Act. Although unregistered, Viola was an investment adviser within the meaning of the Advisers Act. *See* Advisers Act Section 202(a)(11). It cannot be questioned that the Commission has authority to bar persons from association with investment advisers, whether registered or unregistered, or otherwise sanction them under Section 203 of the Advisers Act. *Teicher v. SEC*, 177 F.3d 1016, 1017-18 (D.C. Cir. 1999).

IV. SANCTION

As the Division requests, a collateral bar will be ordered.

A. Sanction Considerations

The Commission determines sanctions pursuant to a public interest standard. *See* 15 U.S.C. § 80b-3(f). The Commission considers factors including:

OIP); *Evelyn Litwok*, Advisers Act Release No. 3438, 2012 SEC LEXIS 2328 (July 25, 2012) (dismissing follow-on proceeding after court of appeals, while petition for review was pending before Commission, reversed certain convictions and vacated and remanded other convictions, all of which were basis for OIP), *Kenneth E. Mahaffy, Jr.*, Exchange Act Release No. 68462, 2012 SEC LEXIS 4020 (Dec. 18, 2012) (vacating bar issued in follow-on administrative proceeding where court of appeals, after Commission had issued bar order, vacated criminal conviction that was basis for proceeding).

the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. *Marshall E. Melton*, 2003 SEC LEXIS 1767, at *4-5. Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. *Schild Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46 (Jan. 31, 2006). The public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business. See *Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 SEC LEXIS 1267, at *18 n.26 (Apr. 20, 2012); *Richard C. Spangler, Inc.*, Exchange Act Release No. 12104, 1976 SEC LEXIS 2418, at *34 (Feb. 12, 1976).

B. Sanction

As described in detail in the Findings of Fact, Viola's conduct was egregious and recurrent, over a period of four years, and involved a high degree of scienter, as shown by his conviction for mail fraud. His previous occupation, if he were allowed to continue it in the future, would present opportunities for future violations. Absent a bar, he could re-enter the securities industry. The violations are recent. There is an absence of recognition by Viola of the wrongful nature of his conduct. The degree of direct financial harm to investors is quantified in the more than \$6.8 million in restitution he was ordered to pay, and, as the Commission has often emphasized, the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. See *Christopher A. Lowry*, Investment Company Act of 1940 Release No. 2052, 2002 SEC LEXIS 2346, at *20 (Aug. 30, 2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003); *Arthur Lipper Corp.*, Exchange Act Release No. 11773, 1975 SEC LEXIS 527, at *52 (Oct. 24, 1975). A conviction involving dishonesty requires a bar, and because of the Commission's obligation to ensure honest securities markets, an industry-wide bar is appropriate.

V. ORDER

IT IS ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, GREGORY VIOLA IS BARRED from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or 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, 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, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then a 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 a 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 a motion to correct a 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 occur, the Initial Decision shall not become final as to that party.

Carol Fox Foelak
Administrative Law Judge