

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

In the Matter of : INITIAL DECISION MAKING FINDINGS
: AND IMPOSING SANCTION BY DEFAULT
ROBERT SEIBERT : December 12, 2016

APPEARANCE: Lynn M. Dean for the Division of Enforcement,
Securities and Exchange Commission

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Robert Seibert from the securities industry. He was previously enjoined against violations of the federal securities laws.

I. INTRODUCTION

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on September 26, 2016, pursuant to Section 15(b) of the Securities Exchange Act of 1934. The proceeding is a follow-on proceeding based on *SEC v. Seibert*, No. 15-cv-9331 (C.D. Cal. Jul. 8, 2016), in which Seibert was enjoined against violations of the federal securities laws.

Seibert was served with the OIP in accordance with 17 C.F.R. § 201.141(a)(2)(i) on September 30, 2016. His Answer was due within twenty days of service on him. *See* OIP at 3; 17 C.F.R. § 201.220(b). Seibert was warned that if he failed to file an Answer within the time provided, he would be deemed to be in default, and the undersigned would enter an order barring him from the securities industry. *See Robert Seibert*, Admin. Proc. Rulings Release No. 4294, 2016 SEC LEXIS 3974 (A.L.J. Oct. 21, 2016); OIP at 3; 17 C.F.R. §§ 201.155(a), .220(f). Seibert did not file an Answer, and was ordered to show cause, by December 2, 2016, why he should not be deemed to be in default and be barred from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock. *Robert Seibert*, Admin. Proc. Rulings Release No. 4375, 2016 SEC LEXIS 4313 (A.L.J. Nov. 18, 2016). To date, Seibert has not filed an Answer to the OIP, responded to the order to show cause, or submitted any other correspondence in this proceeding. Accordingly, he has failed to

answer or otherwise to defend the proceeding within the meaning of 17 C.F.R. § 201.155(a)(2). Therefore, he is in default, and the undersigned finds that the allegations in the OIP are true as to him. *See* OIP at 3; 17 C.F.R. §§ 201.155(a), .220(f). Official notice pursuant to 17 C.F.R. § 201.323 is taken of the docket report and the court's orders in *SEC v. Seibert* and of the public official records of the Commission.

II. FINDINGS OF FACT

Seibert, a/k/a “John Grey,” was enjoined in *SEC v. Seibert* from committing violations of the federal securities laws and from participating in the issuance, purchase, offer, or sale of any security except for his personal account; the court also ordered him to pay disgorgement of \$513,810 plus prejudgment interest of \$45,359.82 for a total of \$559,169.82, and ordered that it would determine the amount of civil penalty on motion of the Commission. *SEC v. Seibert*, ECF Nos. 22 at 5; 17-2 at 3. The judgment was entered by default; the court considered several factors in determining to enter the default judgment, including the possibility that material facts are disputed and whether the default was due to excusable neglect. *SEC v. Seibert*, ECF No. 22 at 2-4. The court concluded that Seibert failed to appear and defend despite having been properly served with the complaint and that “[t]his case does not appear to likely have material facts in dispute.” *Id.* at 4.

Seibert is not registered with the Commission in any capacity and has a criminal and regulatory disciplinary record. OIP at 1-2. This includes an injunction, *SEC v. Mitchell Commc'ns Corp.*, No. 93-cv-2226 (N.D. Ga. Dec. 21, 1993), ECF No. 24; two separate convictions for wire fraud and conspiracy to commit securities fraud in 2000; a California state conviction for grand theft and fraud in the offer of securities in 2005; and 2008 and 2013 Desist and Refrain Orders entered against him by the California Department of Business Oversight related to fraud in connection with his sale of securities in California. *Id.*

The following additional facts were established in the court's Order Granting Plaintiff's Motion for Default Judgment in *SEC v. Seibert*, ECF No. 22 (granting ECF No. 17-1): Seibert owned and managed Universal Stock Transfer (UST) through which he and UST sales agents cold-called vulnerable, elderly investors and encouraged them to purchase a variety of stocks quoted on the “OTC Link,” an inter-dealer quotation system for over-the-counter securities. Seibert and the UST sales agents induced investors to invest by falsely guaranteeing varying returns of up to double their investment and holding himself out as an experienced broker and affiliate of the issuers. Between January 2013 and February 2015, Seibert raised \$513,810 from at least forty-one people residing in several states, including California. Instead of using the investors' money to purchase securities, Seibert misappropriated the entirety of the funds, spending it for his personal benefit, including paying for travel, purchasing merchandise and meals, and making payments on his outstanding child support obligations. Seibert used “John Grey” as an alias in carrying out this fraud. In doing so, he concealed his true name and his civil and criminal disciplinary record. *Id.*, ECF No. 17-1 at 1-2.

III. CONCLUSIONS OF LAW

Seibert has been enjoined “from engaging in or continuing any conduct or practice in connection with . . . the purchase or sale of any security” within the meaning of Sections 15(b)(4)(C) and 15(b)(6)(A)(iii) of the Exchange Act.

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. §§ 78o(b)(6). The Commission considers factors including:

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)), *aff’d on other grounds*, 450 U.S. 91 (1981). 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*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at *5 (July 25, 2008). 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 the Findings of Fact, Seibert’s conduct was egregious and recurrent, over a period of two years, and involved a high degree of scienter. His preying on vulnerable, elderly investors and use of an alias are additional indications of a high degree of scienter, particularly in view of his disciplinary history that stretches back than twenty years. His occupation, if he were allowed to continue it in the future, would present opportunities for future violations. Absent a bar, he could engage in fraud in the securities industry. The violations are recent. Seibert has not recognized the wrongful nature of his conduct or made assurances against future violations, and had he done so, such representations would be questionable in view of his extensive history

of wrongdoing. The \$513,810 raised from investors is a measure of the direct harm to the marketplace. Further, 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). An injunction against a serial recidivist involving dishonesty requires a bar, and because of the Commission's obligation to maintain honest securities markets, an industry-wide bar is appropriate.

V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Robert Seibert IS BARRED from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.¹

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.²

Carol Fox Foelak
Administrative Law Judge

¹ Thus, he would be barred from acting as a promoter, finder, consultant, or agent; or otherwise engaging in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock; or inducing or attempting to induce the purchase or sale of any penny stock, pursuant to Exchange Act Section 15(b)(6)(A), (C).

² A respondent may also file a motion to set aside a default pursuant to 17 C.F.R. § 201.155(b). See *Alchemy Ventures, Inc.*, Exchange Act Release No. 70708, 2013 SEC LEXIS 3459, at *13 & n.28 (Oct. 17, 2013); see also *David Mura*, Exchange Act Release No. 72080, 2014 SEC LEXIS 1530 (May 2, 2014).