Initial Decision Release No. 1357
Administrative Proceeding
File No. 3-18288

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

In the Matter of

Lawrence E. Penn, III

Initial Decision
February 22, 2019

Appearances: Howard A. Fischer, Thomas P. Smith, Karen E. Willenken, and Katherine S. Bromberg for the Division of Enforcement, Securities and Exchange Commission

Lawrence E. Penn III, *pro se*

Before: James E. Grimes, Administrative Law Judge

Summary

I grant the Division of Enforcement's motion for summary disposition. Respondent Lawrence E. Penn III is barred 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 initiated this proceeding in November 2017, when it issued an order instituting proceedings (OIP) under Section 203(f) of the Investment Advisers Act of 1940.[1] This is a follow-on proceeding based on a permanent injunction entered against Penn by the United States District Court for the Southern District of New York and

[1] OIP ¶ I; *see* 15 U.S.C. § 80b-3(f).

Penn's 2015 New York convictions for grand larceny in the first degree and falsifying business records in the first degree.[2]

Penn was served with the OIP in 2017 and filed an answer in January 2018.[3] At the time Penn was served, this proceeding was assigned to a different administrative law judge, who issued an initial decision in June 2018.[4]

The day after the initial decision was issued, the Commission stayed all pending cases.[5] In August 2018, the Commission allowed the stay to lapse, vacated decisions in all pending cases, remanded all cases pending before it, and ordered that all pending cases be reassigned to a different administrative law judge from the one previously assigned.[6] Following the Commission's August order, this proceeding was reassigned to me.[7]

Following reassignment, I held a prehearing conference, permitted Penn to amend his answer, and set a motions schedule.[8] Penn later filed an amended answer and the Division moved for summary disposition, which Penn opposed. As the Commission has directed, in conducting this proceeding and considering the parties' motions, I have given no weight to the opinions, orders, or rulings issued by the prior administrative law judge.[9]

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2 *See SEC v. Penn.*, No. 1:14-cv-0581 (S.D.N.Y.); *People v. Penn*, No. 00073/2014 (N.Y. Sup. Ct. filed Feb. 7, 2014); OIP ¶¶ II.B.2, II.B.4.

3 *Lawrence E. Penn, III,* Admin. Proc. Rulings Release No. 6260, 2018 SEC LEXIS 2985, at *1 (ALJ Oct. 26, 2018).

4 *Lawrence E. Penn, III*, Initial Decision Release No. 1258, 2018 WL 3046490 (ALJ June 20, 2018).

5 *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10510, 2018 WL 3193858 (June 21, 2018).

6 *Pending Admin. Proc.*, Securities Act Release No. 10536, 2018 WL 4003609, at *1 (Aug. 22, 2018).

7 *Pending Admin. Proc.*, Admin. Proc. Rulings Release No. 5955, 2018 SEC LEXIS 2264, at *2–3 (ALJ Sept. 12, 2018).

8 *Penn*, 2018 SEC LEXIS 2985, at *1.

9 *See Pending Admin. Proc.*, 2018 WL 4003609, at *1.

Findings of Fact

The findings and conclusions in this initial decision are based on the record and on facts officially noticed under Commission Rule of Practice 323, 17 C.F.R. § 201.323.[10] In making the findings below, I have applied preponderance of the evidence as the standard of proof.[11]

Following graduation from the United States Military Academy and five years' service in the Army, Penn worked for a variety of entities in the financial industry.[12] From 2007 through 2014, he was the general partner of Camelot Acquisitions Secondary Opportunities, LP (the Fund).[13] Camelot Acquisitions Secondary Opportunities Management, LLC (Camelot Management), was the Fund's investment adviser and became registered with the Commission in 2012.[14] Penn controlled Camelot Management.[15]

By 2010, Penn and an accomplice had created an entity call Ssecurion, LLC, which ostensibly was an investigations company.[16] But Ssecurion was a sham entity and its website was a fraud.[17] Relying on 32 fictitious invoices issued by Ssecurion, purportedly for "due diligence" services, Penn diverted millions from the Fund.[18] Between 2010 and 2013, Penn orchestrated 80 monetary transfers to Ssecurion, totaling nearly $9.3 million.[19] Most of these funds were then transferred to Camelot Management and Camelot Group

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[10] I take official notice of the district court's docket in *SEC v. Penn* and the orders the court has issued. *See* 17 C.F.R. § 201.323.

[11] *See John Francis D'Acquisto*, Advisers Act Release No. 1696, 1998 WL 34300389, at *2 (Jan. 21, 1998).

[12] Div. Ex. 20 at 6.

[13] Div. Ex. 13 at 2.

[14] Div. Ex. 10 at 2, 4 (answer to complaint in *SEC v. Penn*); *see* Div. Ex. 9 at 6 (complaint).

[15] Div. Ex. 10 at 2, 4–5.

[16] Div. Ex. 13 at 2, 4.

[17] *Id.* at 4; Div. Ex. 15 at 2.

[18] Div. Ex. 12 at 2; Div. Ex. 13 at 2.

[19] Div. Ex. 13 at 2; Div. Ex. 14 at 2.

International, LLC (Camelot Group), which was also a Penn-controlled entity.[20]

Once the Fund's auditors became involved, Penn created fake work product to correspond to the fake Ssecurion invoices and lied to the auditors.[21] And when that failed to satisfy the auditors, Penn fired them.[22]

Based on Penn's actions, he was indicted in New York state court in February 2014.[23] In March 2015, Penn pleaded guilty to grand larceny in the first degree in violation of New York Penal Law § 155.42 and falsifying business records in the first degree in violation of New York Penal Law § 175.10.[24] He was sentenced the following month to an indeterminate term of two to six years' imprisonment and ordered to pay over $8.3 million in restitution.[25]

Meanwhile, the Commission filed an injunctive complaint against Penn in the United State District Court for the Southern District of New York.[26] The Commission's complaint and Penn's indictment shared the same factual basis.[27] In December 2016, the district court granted summary judgment on allegations that Penn violated Section 10(b) of the Securities Exchange Act of 1934, Advisers Act Sections 204 and 206, Exchange Act Rule 10b-5, and Advisers Act Rule 204-2.[28] In August 2017, the court permanently enjoined Penn from violating these provisions.[29] In its later final judgment, the court

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20 Div. Ex. 13 at 2; Div. Ex. 14 at 2.

21 Div. Ex. 12 at 4, 5 (deeming paragraph 5 of the complaint admitted); *see* Div. Ex. 9 at 3.

22 Div. Ex. 13 at 4.

23 Div. Ex. 6.

24 Div. Ex. 4.

25 Div. Ex. 6.

26 Div. Ex. 9.

27 Div. Ex. 12 at 3.

28 *Id.* at 2, 16.

29 Div. Ex. 13 at 1–2.

found Penn liable for over $11 million in disgorgement and interest and ordered him to pay a civil monetary penalty of nearly $9.3 million.[30]

Conclusions of Law

Under Rule 250(b), which governs summary disposition in 75-day cases, an administrative law judge may grant a motion for summary disposition if "there is no genuine issue with regard to any material fact and . . . the movant is entitled to a summary disposition as a matter of law."[31] The Commission has repeatedly upheld use of summary disposition in cases such as this one, where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction.[32]

Although Penn denies every material allegation in the OIP in his answer,[33] Penn's guilty plea and the district court orders in the civil case based on Penn's guilty plea and subsequent admissions establish facts that cannot be challenged in this proceeding.[34] There is thus sufficient evidence to decide this matter in the Division's favor, Penn's denials notwithstanding.[35]

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30 Div. Ex. 15 at 4–5.

31 17 C.F.R. § 201.250(b).

32 *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *10 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010); *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at *5 & n.21 (Feb. 4, 2008) (collecting cases), *pet. denied*, 561 F.3d 548 (6th Cir. 2009).

33 Am. Answer at 2–3.

34 *See* Div. Exs. 4, 12, 13; *Kornman*, 2009 WL 367635, at *8; *James E. Franklin*, Exchange Act Release No. 56649, 2007 WL 2974200, at *4 & nn. 13–14 (Oct. 12, 2007).

35 *See James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *7 (Feb. 15, 2017) ("The party opposing summary disposition may not rely on bare allegations or denials but instead must present specific facts showing a genuine issue of material fact for resolution at a hearing." (internal quotation marks omitted)).

1. A collateral bar is warranted.

The Advisers Act gives the Commission authority to impose a collateral bar[36] against Penn if, as is relevant here, (1) he was associated with or seeking to become associated with an investment adviser at the time of the misconduct at issue; (2) he was enjoined "from engaging in or continuing any conduct or practice … in connection with the purchase or sale of any security"; and (3) imposing a bar is in the public interest.[37]

The first factor is met in this case. Camelot Management was an investment adviser and Penn was associated with it.[38] Indeed, he controlled it.[39] And Penn's action while associated with Camelot Management formed the basis for his conviction and injunction. Moreover, the district court found that "[t]here is no dispute Penn was acting as an investment adviser."[40] As a result, there is no doubt that he was associated with an investment adviser at the time of his misconduct.

Turning to the second factor, the district court permanently enjoined Penn from committing fraud in connection with the purchase or sale of any security.[41] The terms of this injunction meet the requirement that a court has enjoined Penn from "engaging in … *any* conduct … in connection with the … sale of *any* security."[42]

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[36] A collateral bar, also referred to as an industry bar, is a bar that prevents an individual from participating in the securities industry in capacities in addition to those in which the person was participating at the time of his or her misconduct. *See Toby G. Scammell*, Advisers Act Release No. 3961, 2014 WL 5493265, at *1 & n.1 (Oct. 29, 2014).

[37] 15 U.S.C. § 80b-3(e)(4), (f).

[38] Div. Ex. 10 at 2, 4–5; Div. Ex. 22.

[39] Div. Ex. 10 at 2, 4–5.

[40] Div. Ex. 12 at 14.

[41] Div. Ex. 15 at 2.

[42] 15 U.S.C. § 80b-3(e)(4) (emphasis added). As the Division argues, the second factor could potentially also be met based on evidence that Penn was convicted within ten years before the issuance of the OIP of any offense that "involves the larceny, theft, … fraudulent concealment, … or misappropriation of funds." Mot. at 13; *see* 15 U.S.C. § 80b-3(e)(2)(C), (f). Although it might seem self-evident that Penn's first-degree grand larceny

(continued…)

To determine whether imposing a collateral bar would be in the public interest, I must weigh the public-interest factors set forth in *Steadman v. SEC*.[43] These include:

> the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[44]

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conviction *involves* larceny, the Supreme Court has held that when "Congress predicate[s]" a penalty on a conviction, one must consider "the statutory definition of the offense of conviction" to determine whether the predicate has been established. *Mellouli v. Lynch*, 135 S. Ct. 1980, 1986 (2015); *see Moncrieffe v. Holder*, 569 U.S. 184, 190–91 (2013) (explaining that determining whether a generically defined offense includes a particular state-law conviction requires comparison of the elements of the generic federal offense with the elements of the state-law offense of conviction); *see also Descamps v. United States*, 570 U.S. 254, 257 (2013) (courts "compare the elements of the statute forming the basis of the defendant's conviction with the elements of the 'generic' crime—*i.e.*, the offense as commonly understood"). Going through this elements-based comparison in this case would serve little point, however, because (1) I've determined that Penn was enjoined, and (2) even if Penn had not been enjoined and Penn's conviction did not involve larceny, Advisers Act Section 203(e)(3) contains a catch-all for felonies—offenses "punishable by imprisonment for 1 or more years"—not already described in Section 203(e)(2). *See* 15 U.S.C. § 80b-3(e)(3)(A). In other words, it does not matter whether Penn's offense involved larceny because even it did not, he was enjoined and he was sentenced to an indeterminate term of two to six years' imprisonment, in excess of the one-year threshold in Section 203(e)(3)(A).

[43] 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Kornman*, 2009 WL 367635, at *6.

[44] *David R. Wulf*, Exchange Act Release No. 77411, 2016 WL 1085661, at *4 (Mar. 21, 2016).

The Commission also considers the deterrent effect of administrative sanctions.[45] The public interest inquiry is "flexible" and "no one factor is dispositive."[46]

Before imposing a collateral bar, an administrative law judge must determine, based on the evidence presented, whether a bar "is necessary or appropriate to protect investors and markets."[47] I must therefore "'review [Penn's] case on its own facts' to make findings regarding [his] fitness to participate in the industry in the barred capacities."[48] A decision to impose a collateral bar "should be grounded in specific 'findings regarding the protective interests to be served' by barring the respondent and the 'risk of future misconduct.'"[49]

Turning to the *Steadman* public-interest factors, Penn's conduct was egregious. The Commission has held that "[t]he securities industry presents continual opportunities for dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence."[50] This is especially so for investment advisers, in whom clients must be able to put their trust.[51] Given this fact and the fact that investment advisers are fiduciaries who owe their clients "an affirmative duty of 'utmost good faith and full and fair

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[45] *Id.* General deterrence is relevant but not determinative of whether the public interest weighs in favor of imposing a collateral bar. *See Peter Siris*, Advisers Act Release No. 3736, 2013 WL 6528874, at *11 n.72 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014).

[46] *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *4 (Sept. 26, 2007), *pet. denied*, 548 F.3d 129 (D.C. Cir. 2008).

[47] *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 (Mar. 7, 2014) (internal quotation marks omitted), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 WL 3030883 (May 26, 2016).

[48] *Id.* (quoting *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005)).

[49] *Id.* (quoting *McCarthy*, 406 F.3d at 189–90); *see also John W. Lawton*, Advisers Act Release No. 3513, 2012 WL 6208750, at *9 (Dec. 13, 2012) ("[T]he Commission must consider not only past misconduct, but the broader question of the future risk the respondent poses to investors."), *vacated in part on other grounds*, Advisers Act Release No. 4402, 2016 WL 3030847 (May 27, 2016).

[50] *Seghers*, 2007 WL 2790633, at *7.

[51] *Schield Mgmt. Co.*, Advisers Act Release No. 2477, 2006 WL 231642, at *10 n.56 (Jan. 31, 2006).

disclosure of all material facts,'" the Commission consistently views investment advisers who defraud their clients with particular opprobrium.[52]

Rather than honor his fiduciary obligation, Penn abused his position of trust by stealing over $9 million of his clients' money. This level abuse of trust by an investment adviser easily qualifies as egregious.[53]

Penn's conduct was not isolated. He transferred funds 80 times over a three-year period, eventually stealing over $9 million.

Penn also acted with a high degree of scienter. In New York, larceny is a specific intent crime,[54] and when he pleaded guilty, Penn admitted that he stole the Fund's money.[55] In other words, he intended to take the Fund's money.[56] Penn's high degree of scienter is also shown by the 80 fund transfers he made and his efforts to hide his misconduct by providing auditors with fake work-product, lying to the auditors, and eventually firing the auditors.

Penn has neither made assurances against future misconduct nor demonstrated that he understands or recognizes the wrongfulness of his criminal acts. To the contrary, soon after pleading guilty he began a wide-ranging effort to attack his guilty plea, first in New York appellate courts, which rejected his efforts, and then before the district court in response to the Commission's injunctive complaint.[57] As is discussed below, Penn has continued that effort during the course of this proceeding.

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[52] *James C. Dawson*, Advisers Act Release No. 3057, 2010 WL 2886183, at *3 (July 23, 2010); *see id. at* *4 ("[W]e have consistently viewed misconduct involving a breach of fiduciary duty or dishonest conduct on the part of a fiduciary, such as the fraud committed by Dawson on his clients, as egregious.").

[53] *See Alfred Clay Ludlum, III*, Advisers Act Release No. 3628, 2013 WL 3479060, at *4 (July 11, 2013) (involving $852,000 taken from investment advisory clients).

[54] *People v. Guzman*, 416 N.Y.S.2d 23, 25 (N.Y. App. Div. 1979); *People v. Coates*, 407 N.Y.S.2d 866, 871 (N.Y. App. Div. 1978).

[55] Div. Ex. 4 at 6–7.

[56] *See* N.Y. Penal Law § 155.05(1).

[57] *See* Div. Exs. 7–8; Div. Ex. 10 at 19–20.

Allowing Penn to remain in the securities industry would present him with future opportunities for further misconduct and would put the investing public at risk. Indeed, the fact of Penn's past misconduct raises an inference that if given the chance, he will cause additional harm to the investing public.[58] This determination is supported by my finding that Penn's conduct was egregious.[59]

Finally, imposing a collateral bar will serve the Commission's interest in deterring others from engaging in similar misconduct.

2. Penn's arguments have no merit.

Penn presents a number of meritless arguments which only serve to show that he has not accepted responsibility for his actions.

Penn argues that I cannot rely on his conviction because it has "not been heard on the merits and … is in conflict with the law."[60] But Penn pleaded guilty, thereby putting the merits inquiry to rest.[61] And the Advisers Act, which allows the entry of a bar based on a conviction, defines the term

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[58] *See Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *6 n.50 (July 26, 2013).

[59] *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004) (holding that a finding of egregiousness "justifies the inference" that misconduct will recur); *Warwick Capital Mgmt., Inc.*, Advisers Act Release No. 2694, 2008 WL 149127, at *11 (Jan. 16, 2008) ("The existence of a violation raises an inference that the violation will be repeated, and where the misconduct resulting in the violation is egregious, the inference is justified.").

[60] Opp'n at 7.

[61] *See Kornman*, 2009 WL 367635, at *8; *Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 SEC LEXIS 158, at *26 & nn.32-33 (Jan. 14, 2011) (a respondent cannot challenge a plea agreement in a Commission proceeding); *see also United States v. Andreadis*, 366 F.2d 423, 433 (2d Cir. 1966) ("Under New York law the guilty pleas entered by appellants in the state proceeding were formal judicial admissions of the allegations contained in the information."); *cf. United States v. Podell*, 572 F.2d 31, 35 (2d Cir. 1978) ("[A] criminal conviction, whether by jury verdict or guilty plea, constitutes estoppel in favor of the United States in a subsequent civil proceeding as to those matters determined by the judgment in the criminal case.").

convicted to include a plea of guilty.[62] The fact of an appeal makes no difference.[63]

And Penn's subjective belief that his conviction—which resulted from his guilty plea—is invalid is irrelevant. As I have already noted, he cannot collaterally attack his conviction in this proceeding.[64]

Penn also claims that members of the Division "worked in concert with the" Manhattan district attorney and "constructed a [c]omplaint" that "was used to construct an unlawful [i]ndictment."[65] Penn, however, provides no evidence that members of the Division "worked in concert with the" Manhattan district attorney. Moreover, he does not attempt to explain what would be improper about Division personnel alerting prosecutorial authorities that Penn likely committed a crime. Further, if Penn thought something untoward had occurred in relation to this indictment, the proper forum to raise the issue would have been the trial court.

Penn next takes aim at his injunction, but he also cannot attack in this proceeding the injunction the district court entered, orders the district court issued, or the Division's conduct before or during the litigation before the district court.[66]

To the extent Penn has requested a stay based on his argument that his conviction is invalid,[67] his argument is meritless, and a stay is not warranted.

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62 15 U.S.C. § 80b-2(a)(6); Div. Exs. 4, 6.

63 *See United States v. 303 W. 116th St.*, 901 F.2d 288, 292 (2d Cir. 1990) ("Generally, the pendency of an appeal from a conviction does not deprive a judgment of its preclusive effect."). Even if the pendency of an appeal did matter, Penn has already lost his appeal. Div. Ex. 8.

64 *See Elliott v. SEC*, 36 F.3d 86, 87 (11th Cir. 1994); *Kornman*, 2009 WL 367635, at *8; *see also* Prehearing Tr. 31–32 (explaining Penn's inability in this forum to collaterally attack the state and district court judgments against him).

65 Opp'n at 10.

66 *Franklin*, 2007 WL 2974200, at *4 & nn. 13-14.

67 *See* Opp'n at 23–24.

This would be the case even if an appeal were pending.[68] Penn's stay motion is denied.

Penn's arguments are thus meritless. In light of the foregoing, I find that it is in the public interest to impose a collateral bar against Penn.[69]

Order

The Division of Enforcement's motion for summary disposition is GRANTED.

Under Section 203(f) of the Investment Advisers Act of 1940, Lawrence E. Penn III is BARRED from associating with an investment adviser, broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

This initial decision will become effective in accordance with and subject to the provisions of Rule 360.[70] Under 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.[71] 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 motion to correct a manifest error of fact or

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68 *Jon Edelman*, File No. 3-8950, 1996 SEC LEXIS 3560, at *2 (May 6, 1996) ("The pendency of an appeal of a criminal conviction generally is an insufficient basis upon which to grant a motion to stay proceedings.").

69 In his amended answer, Penn referred to a "motion for more definitive statement," Am. Answer at 1–2, but did not elaborate or separately file such a motion. To the extent Penn has moved for a more definite statement, his motion is denied.

70 *See* 17 C.F.R. § 201.360.

71 See 17 C.F.R. § 201.111.

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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James E. Grimes
Administrative Law Judge