

INITIAL DECISION RELEASE NO. 1369
ADMINISTRATIVE PROCEEDING
FILE NO. 3-17699

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

In the Matter of :
: INITIAL DECISION MAKING FINDINGS
SHERVIN NEMAN and : AND IMPOSING SANCTION BY DEFAULT
NEMAN FINANCIAL, INC. : March 18, 2019

APPEARANCE: Amy Jane Longo for the Division of Enforcement,
Securities and Exchange Commission

Shervin Neman, *pro se*, and for Neman Financial, Inc.

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Shervin Neman from the securities industry and dismisses the proceeding, as moot, as to Neman Financial, Inc. They were 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 November 29, 2016, pursuant to Sections 203(e) and 203(f) of the Investment Advisers Act of 1940. The proceeding is a follow-on proceeding based on *SEC v. Neman*, No. 12-cv-3142 (C.D. Cal.), in which Respondents Shervin Neman and Neman Financial, Inc., were enjoined from violating the antifraud, recordkeeping, and registration provisions of the federal securities laws. Respondents filed their Answer to the OIP on April 3, 2017, and the Division of Enforcement's motion for summary disposition followed. On November 20, 2017, an Initial Decision imposed associational bars on Shervin Neman and revoked the registration of Neman Financial as an investment adviser. *Shervin Neman*, Initial Decision Release No. 1227, 2017 SEC LEXIS 3648 (A.L.J.).

On August 22, 2018, in light of *Lucia v. SEC*, 138 S. Ct. 2044 (2018), the Commission ordered a new hearing in each pending proceeding, including this one, before an administrative law judge (ALJ) who had not previously participated in the proceeding, unless the parties expressly agreed to alternative procedures, including agreeing that the proceeding remain with the previous presiding ALJ. *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10536, 2018 SEC LEXIS 2058, at *2-3 (August 22 Order). Accordingly, the proceeding was reassigned to the

undersigned. *Pending Admin. Proc.*, Admin. Proc. Rulings Release No. 5955, 2018 SEC LEXIS 2264 (C.A.L.J. Sept. 12, 2018).

As to each affected proceeding, including this one, in which the parties had not agreed to alternative procedures, the Commission ordered that the newly assigned presiding ALJ “issue an order directing the parties to submit proposals for the conduct of further proceedings.” August 22 Order, 2018 SEC LEXIS 2058, at *4. The Commission specified, “if a party fails to submit a proposal, the ALJ may enter a default against that party.” *Id.* Accordingly, after the reassignment of the proceeding, Respondents were afforded an opportunity to file an amended Answer, and the parties were ordered to submit proposals for the conduct of further proceedings by December 14, 2018. *Shervin Neman*, Admin. Proc. Rulings Release No. 6120, 2018 SEC LEXIS 2692 (A.L.J. Sept. 28, 2018) (September 28 Order). The September 28 Order was served on Respondents at Neman’s current address by U.S. mail on October 1, 2018, in compliance with 17 C.F.R. §§ 201.141(b), .150(c)(2), (d). Thereafter, Respondents’ only filing was a letter from Neman, dated October 28, 2018, asking the undersigned to release him from prison, threatening to wreak divine “wrath . . . on you, all of you in your country,” for noncompliance. Respondents failed to file a proposal for the conduct of further proceedings¹ and were ordered to show cause, by January 4, 2019, why Shervin Neman should not be barred from the securities industry and the investment adviser registration of Neman Financial revoked. *Shervin Neman*, Admin. Proc. Rulings Release No. 6410, 2018 SEC LEXIS 2692 (A.L.J. Dec. 18, 2018) (Order to Show Cause). The Order to Show Cause was served on Respondents at Neman’s current address by U.S. mail on December 24, 2018, in compliance with 17 C.F.R. §§ 201.141(b), .150(c)(2), (d).² Neither Respondent filed a proposal for the conduct of further proceedings or responded to the Order to Show Cause by that date, but the proceeding was stayed on January 16, 2019, as a result of the Commission’s “lapse in appropriations.” *Pending Admin. Proc.*, Securities Act Release No. 10602, 2019 SEC LEXIS 5, at *1. The stay has now been lifted, and, absent a request for extension of time, any filing due between December 27, 2018, and January 30, 2019, should have been filed by February 13, 2019. *Pending Admin. Proc.*, Securities Act Release No. 10603, 2019 SEC LEXIS 37, at *1 (Jan. 30, 2019). To date, neither Respondent has filed a proposal for the conduct of further proceedings, a response to the Order to Show Cause, or a request for extension of time. Accordingly, in view of their failures to make required filings, Respondents are in default, and the undersigned finds that the allegations in the OIP are true as to them. *See* August 22 Order, 2018 SEC LEXIS 2058, at *4; *Pending Admin. Proc.*, 2019 SEC LEXIS 37, at *1; 17 C.F.R. § 201.155(a)(2).

On February 14, 2019, the undersigned proposed to dismiss the proceeding as to Neman Financial on the basis that its investment adviser registration had already been cancelled and invited the Division to comment or propose an alternative sanction. *Shervin Neman*, Admin. Proc. Rulings Release No. 6456, 2019 SEC LEXIS 176 (A.L.J.). On February 27, 2019, the Division responded,

¹ The Division of Enforcement filed a proposal. Neman’s October 28 letter requesting the undersigned to have him released from prison, “or else,” is not a proposal “for the conduct of further proceedings” in this proceeding. Neither the undersigned nor the Commission is authorized to release him from prison.

² The U.S. Postal Service tracking numbers for the mailings to Neman and Neman Financial are 7017240000008383227 and 7017240000008383210, respectively.

stating that it did not oppose the proposal to dismiss the proceeding as to Newman Financial in light of the cancellation of its registration.

II. PROCEDURAL ISSUES

A. Official Notice

Official notice pursuant to 17 C.F.R. § 201.323 is taken of the Commission's public official records and of the docket reports and courts' orders in *SEC v. Neman* and *United States v. Neman*, No. 2:13-cr-289 (C.D. Cal.), *conviction aff'd*, No. 15-50087 (9th Cir. Dec. 8, 2016) a criminal prosecution of Shervin Neman based on the same misconduct, and from Financial Industry Regulatory Authority, Inc. (FINRA), records as well. *See Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *1 n.1 (Apr. 18, 2013), *pet. denied*, 575 F. App'x 1 (D.C. Cir. 2014).

B. Collateral Estoppel

In his 2017 Answer to the OIP, Neman refers to the civil case against him, on which this proceeding is based, and challenges the criminal proceeding, on which the civil proceeding is partly based, on the bases of prosecutorial misconduct and a woeful lack of due process. He refers to his November 2014 motion to set aside the conviction and dismiss the case or order a new trial, which explores these topics in detail, and to the court's November 14, 2014, order denying his motion. However, he is estopped from relitigating those proceedings in this proceeding. It is well established that the Commission does not 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 *10 (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*, Exchange Act Release No. 38389, 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). Nor does the Commission 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*, Exchange Act Release No. 39629, 1998 SEC LEXIS 193, at *7-8 (Feb. 12, 1998).

III. FINDINGS OF FACT

The facts of Respondents' misconduct are described in *SEC v. Neman*, ECF Nos. 108 at 4-5, 134 at 2-3: Both the criminal and civil cases were based on Neman's solicitation of investors for three categories of investments: reselling foreclosed homes, pooling investor funds to purchase shares of issuers such as Facebook, and pooling investor funds to purchase and "flip" pre-IPO shares. In fact, Neman operated a Ponzi scheme, in which he paid returns to earlier investors with funds received from later investors. Two specific investors lost a total of \$3,279,185.63.

According to the Commission’s official records and FINRA records: Neman has never been registered as, or associated with a registered broker-dealer or other registrant aside from Neman Financial;³ and Neman Financial, of which Neman was sole owner, CEO, and Chief Compliance Officer from June 2010, was registered as an investment adviser from that date until February 6, 2013, when its registration was cancelled.⁴ Neman was the sole owner of, and alone controlled, Neman Financial and did not have any employees. *SEC v. Neman*, ECF No. 108 at 17. Respondents were enjoined in *SEC v. Neman* on November 16, 2016, from committing violations of the antifraud, recordkeeping, and registration provisions of the federal securities laws: Section 17(a) of the Securities Act of 1933; Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder; and Sections 203A, 204(a), 206(1), 206(2), and 206(4) of the Advisers Act and Rules 204-2 and 206-4-8(a)(1) thereunder. *SEC v. Neman*, ECF Nos. 108, 136. The court’s conclusions as to Respondents’ violations of Securities Act Section 17(a) and Advisers Act Sections 203A, 206(1), and 206(2) were based on Neman’s conviction in *United States v. Neman*. *SEC v. Neman*, ECF No. 108. The judgment against Neman Financial was entered by default. *SEC v. Neman*, ECF No. 123; ECF No. 134 at 4.

Neman’s conviction was based on conduct arising from same facts on three dates in 2011 and 2012; he was convicted, after a four-day jury trial, of wire fraud in violation of 18 U.S.C. § 1343 and mail fraud in violation of 18 U.S.C. § 1341; he was sentenced to 135 months of imprisonment, followed by three years of supervised release, and ordered to pay restitution of \$3,279,185.63. *United States v. Neman*, ECF Nos. 1, 96, 100, 102, 104, 113, 219, 220. Neman filed numerous motions, including after October 14, 2014, when he commenced representing himself. The court’s November 14, 2014, order denying his motion to set aside the conviction noted that it was a reiteration of previous claims that he was ready, willing, and able to make full restitution to the victims, based on a forged account statement purporting to establish that he had nearly \$4 million on account at Goldman Sachs. The court cautioned him against continuing to file

³ See BrokerCheck Report, available at <http://brokercheck.finra.org> (last visited February 4, 2019) (indicating that Shervin Neman is not in FINRA records).

⁴ See *Order Cancelling Registrations of Certain Investment Advisers Pursuant to Section 203(h) of the Investment Advisers Act of 1940*, Advisers Act Release No. 3547, 2013 SEC LEXIS 431, at *2 (Feb. 6, 2013) (cancelling the registrations of several investment advisers, including Neman Financial); *Notice of Intention to Cancel Registrations of Certain Investment Advisers Pursuant to Section 203(h) of the Investment Advisers Act of 1940*, Advisers Act Release No. 3490, 2012 SEC LEXIS 3288, at *6 (Oct. 19, 2012) (giving notice that the Commission intends to cancel the registrations of several investment advisers, including Neman Financial). See also https://www.adviserinfo.sec.gov/IAPD/IAPDFirmSummary.aspx?ORG_PK=159019 (last visited Feb. 6, 2019) (showing Neman Financial’s registration status as “Cancelled,” effective February 6, 2013, and stating that it “is **NOT currently registered** and is **NOT filing reports** with the SEC or any state.” It was registered as a California corporation, No. C3247034, on June 1, 2010, and its current status is “FTB Suspended.” See <https://businesssearch.sos.ca.gov/CBS/Detail> (last visited Feb. 6, 2019). “FTB Suspended” indicates that it was suspended by the Franchise Tax Board for infractions such as failure to file a return or pay taxes. See <https://www.sos.ca.gov/business-programs/business-entities/cbs-field-status-definitions/> (last visited Feb. 6, 2019).

motions asserting that he is able to make immediate restitution based on the fraudulent account statement and stated, “He sought to perpetrate a fraud upon this court once. He would be wise to make this the last time.” *United States v. Neman*, ECF No. 179 at 2-3.

The mail fraud offense occurred on June 20, 2012, *after* the *SEC v. Neman* court issued a preliminary injunction against Respondents on April 18, 2012. *See SEC v. Neman*, ECF No. 17; *United States v. Neman*, ECF No. 104.

IV. CONCLUSIONS OF LAW

Respondents have been permanently enjoined “from engaging in or continuing any conduct or practice in connection with [acting as an investment adviser]” or “in connection with the purchase or sale of any security” within the meaning of Sections 203(e)(4) and 203(f) of the Advisers Act. Further, their misconduct underlying the injunctive action occurred while Neman Financial was an investment adviser and Neman was associated with Neman Financial.

Neman, as owner, sole principal, Chief Compliance Officer, and CEO of Neman Financial, was an associated person of an investment adviser. *See* Advisers Act Sections 202(a)(17), 203(f). Investment advisers and their associated persons are fiduciaries. *Fundamental Portfolio Advisors, Inc.*, Securities Act Release No. 8251, 2003 SEC LEXIS 1654, at *29 (July 15, 2003), *recons. denied*, Securities Act Release No. 8574, 2005 SEC LEXIS 1192 (May 23, 2005); *see also Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 17 (1979). As such, investment advisers and their associated persons are held to a higher standard than broker-dealers and their associated persons.

Neman Financial is accountable for the actions of its responsible officer, Neman. *See C.E. Carlson, Inc. v. SEC*, 859 F.2d 1429, 1435 (10th Cir. 1988) (citing *A.J. White & Co. v. SEC*, 556 F.2d 619, 624 (1st Cir. 1977)). A company’s scienter is imputed from that of the individuals controlling it. *See SEC v. Blinder, Robinson & Co.*, 542 F. Supp. 468, 476 n.3 (D. Colo. 1982) (citing *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1096-97 nn.16-18 (2d Cir. 1972)). As an associated person of Neman Financial, Neman’s conduct and scienter are also attributed to the firm. *See* Section 203(e) of the Advisers Act.

V. PUBLIC INTEREST ANALYSIS AND SANCTION

A collateral bar will be ordered as to Neman.⁵ The proceeding as to Neman Financial will be dismissed as moot since its investment adviser registration has already been cancelled.

A. Sanction Considerations

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

⁵ The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which became effective on July 22, 2010, provided collateral bars in each of the several statutes regulating different aspects of the securities industry. The conduct that led to Respondents’ injunction and Neman’s conviction occurred after July 22, 2010.

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, Respondents' conduct was egregious and recurrent, over a period of at least two years, and involved a high degree of scienter as indicated by the fact that their misconduct included operating a Ponzi scheme, and the crimes of which Neman was convicted required an intent to defraud. Neman even continued the conduct after Respondents had been preliminarily enjoined from doing so. Their occupation, if they were allowed to continue it in the future, would present opportunities for future violations. Absent a bar, they could engage in fraud in the securities industry. The violations are recent. Neman has not recognized the wrongful nature of his conduct or made assurances against future violations. To the contrary he has continued to maintain that he was wrongly sanctioned, even using false documentation to show this after his conviction. The over \$3 million that he was ordered to pay in restitution 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 involving dishonesty requires a bar, and because of the Commission's obligation to maintain honest securities markets, an industry-wide bar as to Neman is appropriate.

As to Neman Financial, the OIP instituted the proceed to determine "[w]hat, if any remedial action is appropriate in the public interest against Respondent Neman Financial pursuant to Section 203(e) of the Advisers Act." OIP at III.C. While revoking its registration, the most stringent sanction authorized by Advisers Act Section 203(e), is clearly appropriate, the Commission has already cancelled its registration, and a lesser sanction, such as censure, would inappropriately diminish the degree of Neman Financial's wrongdoing. Neman Financial is, for all intents and purposes, defunct. Its status as a California corporation is suspended, and it is the *alter ego* of

Neman, its sole owner, officer, employee, and control person, who will be under court supervision for many years to come and will also be subject to a bar from the securities industry.

VI. ORDER

IT IS ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, Shervin Neman IS BARRED from associating with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

IT IS FURTHER ORDERED that the proceeding against Neman Financial, Inc., IS DISMISSED.

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.⁶

/S/ Carol Fox Foelak

Carol Fox Foelak
Administrative Law Judge

⁶ 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).