

INITIAL DECISION RELEASE NO. 1373
ADMINISTRATIVE PROCEEDING
FILE NO. 3-18209

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

In the Matter of : INITIAL DECISION
: MAKING FINDINGS AND
HUI FENG and : IMPOSING SANCTIONS BY DEFAULT
LAW OFFICES OF FENG & ASSOCIATES, P.C. : April 15, 2019

APPEARANCE: Donald W. Searles for the Division of Enforcement,
Securities and Exchange Commission

Hui Feng, *pro se*, and for Law Offices of Feng & Associates, P.C.

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Hui Feng and Law Offices of Feng & Associates, P.C., from the securities industry. 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 September 25, 2017, pursuant to Section 15(b) of the Securities Exchange Act of 1934. The proceeding is a follow-on proceeding based on *SEC v. Hui Feng*, No. 2:15-cv-9420 (C.D. Cal.), *appeal pending*, No. 17-56522 (9th Cir.), in which Respondents were enjoined from violating the antifraud and registration provisions of the federal securities laws. On March 12, 2018, an Initial Decision imposed associational bars on Respondents. *Hui Feng*, Initial Decision Release No. 1242, 2018 SEC LEXIS 705 (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, the parties were ordered to submit proposals for the conduct of further proceedings by December 14, 2018, and were warned that an associational bar would be imposed, by default, on a Respondent that failed to submit a proposal. *Hui Feng*, Admin. Proc. Rulings Release No. 6122, 2018 SEC LEXIS 2697 (A.L.J. Sept. 28, 2018). Respondents made no filings, and, in particular, failed to file a proposal for the conduct of further proceedings¹ and were ordered to show cause, by March 28, 2019, why they should not be barred from the securities industry. *Hui Feng*, Admin. Proc. Rulings Release No. 6498, 2019 SEC LEXIS 502 (A.L.J. Mar. 15, 2019). (Order to Show Cause). To date, neither Respondent has filed a proposal for the conduct of further proceedings or a response to the Order to Show Cause. 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; 17 C.F.R. § 201.155(a)(2).

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. Hui Feng*, 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

Respondents are estopped from relitigating *SEC v. Hui Feng* 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, as in *SEC v. Hui Feng*; 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 &

¹ It is noted that Respondents emailed to a number of persons presently or previously employed at the Commission copies of a complaint regarding Exchange Act Section 15(a) registration (*Platform Real Estate v. SEC*) and an interlocutory ruling dismissing (for failure to plead with particularity) a complaint and granting leave to file an amended complaint (*SEC v. Kameli*, No. 17-cv-4686 (N.D. Ill. Mar. 14, 2019), ECF No. 182). Dissemination of these items of general legal interest cannot be construed as a proposal for the conduct of further proceedings in this proceeding.

mn.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 pendency of an appeal preclude the Commission from action based on an injunction. *See Joseph P. Galluzzi*, Exchange Act Release No. 46405, 2002 SEC LEXIS 3423, at *10 n.21 (Aug. 23, 2002); *Charles Phillip Elliott*, Exchange Act Release No. 31202, 1992 SEC LEXIS 2334, at *11 (Sept. 17, 1992). If Respondents are successful in overturning their injunction, they can request the Commission to vacate any sanctions ordered in this proceeding (or to dismiss the proceeding, if it is still pending).²

III. FINDINGS OF FACT

The facts of Respondents' misconduct are described in the court's August 10, 2017, Amended Order Re: Motions for Summary Judgment, *SEC v. Hui Feng*, ECF No. 101: Respondents are immigration attorneys, who have been involved from 2010 through at least August 2017 in the EB-5 Immigrant Investor Program. The EB-5 program was created by Congress in 1992 to stimulate the U.S. economy with investment from foreigners. Foreigners who invest \$500,000 or \$1,000,000 in a domestic commercial enterprise may petition the U.S. Citizenship and Immigration Services and receive conditional permanent residency ("green card") status. Many EB-5 investments are administered by so-called "regional centers." The conduct underlying *SEC v. Hui Feng* included Respondents' receipt of undisclosed commissions from regional centers in connection with their clients' EB-5 program investments. Respondents failed to disclose to clients that they received commissions from regional centers for referring clients to invest in a regional center's offerings. Respondents also falsely represented to regional centers that foreign-based persons or entities were responsible for finding EB-5 investors, when in reality Feng's relatives or an entity controlled by him received commissions for referring clients. Respondents advertised for clients and promoted EB-5 projects on the internet and through Feng's website. Respondents performed due diligence regarding EB-5 projects, were involved in negotiations between regional centers and clients, and recommended specific regional centers to clients. As of February 2015, Feng began to disclose that he would receive referral fees in the engagement agreements clients signed prior to retaining Feng's legal services. As a result of *SEC v. Hui Feng*, some regional centers refused to do business with Respondents and their foreign-based entity, and Feng created a new law firm and a new foreign-based entity in which he has a 50% ownership interest.

² *See Jilaine H. Bauer, Esq.*, 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 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).

According to the Commission's official records and FINRA records: Neither Respondent has ever been registered as, or associated with a registered broker-dealer or other registrant.³

On August 10, 2017, Respondents were enjoined from violating Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder and Section 17(a) of the Securities Act of 1933. They were ordered to pay disgorgement of ill-gotten gains of \$1,268,000 plus prejudgment interest of \$130,517.09 for a total of \$1,398,517.09, for which they are jointly and severally liable; Feng was ordered to pay a civil penalty of \$160,000; and Law Offices of Feng & Associates was ordered to pay a civil penalty of \$800,000. *SEC v. Hui Feng*, ECF No. 102.

IV. CONCLUSIONS OF LAW

Respondents have been permanently 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.

V. SANCTION

Collateral bars will be ordered.⁴

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, 2003). 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,

³ *See* BrokerCheck Report, available at <http://brokercheck.finra.org> (last visited April 5, 2019) (indicating that Hui Feng and Feng & Associates are not in FINRA records).

⁴ 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. Most of the conduct that led to Respondents' injunction occurred after July 22, 2010.

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 several years, and involved a high degree of scienter as indicated by the fact that their misconduct included violating the antifraud provisions. Feng even created new entities to continue the conduct after some regional centers stopped doing business with the previous entities as a result of the legal proceedings against Respondents. 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. Feng has begun to disclose that he would receive referral fees in the engagement agreements clients sign prior to retaining his legal services. Consistent with a vigorous defense of the charges against them, Respondents have not otherwise recognized the wrongful nature of their conduct or made assurances against future violations. The \$1,268,000 that Respondents were ordered to pay in disgorgement 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, industry-wide bars are appropriate.

VI. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934 HUI FENG and LAW OFFICES OF FENG & ASSOCIATES, P.C., ARE 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.⁵

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

⁵ Thus, Respondents will be barred from acting as 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).

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).