

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

In the Matter of
Mark Feathers

Initial Decision
September 25, 2020

Appearances: John B. Bulgozdy and Lynn Dean for the Division of
Enforcement, Securities and Exchange Commission

Mark Feathers, *pro se*

Before: James E. Grimes, Administrative Law Judge

Summary

I grant the Division of Enforcement's motion for summary disposition. Respondent Mark Feathers is barred from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in an offering of any penny stock.

Procedural Background

The Securities and Exchange Commission initiated this proceeding in February 2014, when it issued an order instituting proceedings (OIP) under Section 15(b) of the Securities Exchange Act of 1934.¹ This is a follow-on proceeding based on a judgment entered in November 2013 by the United States District Court for the Northern District of California. The district court enjoined Feathers from future violations of Section 17(a) of the Securities Act

¹ OIP at 1; *see* 15 U.S.C. § 78o(b).

of 1933, Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5.²

The administrative law judge originally assigned to this proceeding issued an initial decision in May 2014, barring Feathers from the securities industry.³ The Commission summarily affirmed.⁴ Feathers sought review in the United States Court of Appeals for the Ninth Circuit, which granted his petition for review and, given *Lucia v. SEC*,⁵ remanded for a new hearing before a different administrative law judge.⁶

Following remand and reassignment to a new administrative law judge, that administrative law judge issued an order providing instructions as to his summary disposition procedure.⁷ The order explained that a motion for summary disposition “must be accompanied by a statement of material facts as to which the moving party contends there is no genuine issue,” and must “consist of short numbered paragraphs.”⁸ And an opposition must dispute each paragraph or “agree[] that the asserted fact is undisputed.”⁹ The order also warned that the failure to controvert an asserted fact could permit the administrative law judge to find the uncontroverted fact admitted.¹⁰ Finally,

² OIP at 2; see *SEC v. Small Business Capital Corp.*, No. 5:12-cv-3237-EJD (N.D. Cal. Nov. 6, 2013) (the Civil Case).

³ *Mark Feathers*, Initial Decision Release No. 605, 2014 WL 2418472 (ALJ May 30, 2014).

⁴ *Mark Feathers*, Exchange Act Release No. 73634, 2014 WL 6449870 (Nov. 18, 2014).

⁵ 138 S. Ct. 2044 (2018).

⁶ See *Feathers v. SEC*, 774 F. App’x 354, 358 (9th Cir. 2019). In this opinion, the court of appeals affirmed the district court’s judgment in the Civil Case. *Id.* at 356.

⁷ See *Mark Feathers*, Admin. Proc. Rulings Release No. 6724, 2020 SEC LEXIS 2754, at *3–5 (ALJ Jan. 15, 2020).

⁸ *Id.* at *3–4.

⁹ *Id.* at *4.

¹⁰ *Id.* at *5.

because Feathers is unrepresented, the order required the Division to provide him with certain information about how summary disposition functions.¹¹

Although this proceeding was reassigned to me in April 2020,¹² I was unaware of the order governing the summary disposition procedure until Feathers protested in July 2020 that the Division had not complied with the order when it moved for summary disposition.¹³ I thus ordered the Division to refile its motion in compliance with the procedural order issued in January 2020.¹⁴

The Division refiled its motion for summary disposition in late July 2020. Consistent with the summary disposition procedure outlined above, the Division informed Feathers that “[t]o oppose the Division’s motion,” he must support his opposition with “sufficient evidence contradicting the material facts asserted by the Division” and that “bare allegations or denials” would not be enough to counter the Division’s assertions. Instead, he would need to “submit evidence—such as declarations, your own affidavit and/or the affidavits of others, prior testimony, documentary evidence, or facts that can be officially noticed.” Feathers filed an opposition but did not contest the Division’s statement of undisputed facts. The Division filed a reply.

In conducting this proceeding and considering the Division’s motion, I’ve given no weight to the opinions, orders, or rulings issued in this proceeding before the *Lucia* decision.¹⁵

Findings of Fact

In support of its motion for summary disposition, the Division filed a statement of material facts to which there is no genuine issue. As discussed below, Feathers has failed adequately to contest the Division’s statement of material facts. As explained in the procedural order, I am entitled to deem true

¹¹ *Id.*

¹² *Mark Feathers*, Admin. Proc. Rulings Release No. 6749, 2020 SEC LEXIS 940 (ALJ Apr. 6, 2020).

¹³ *Mark Feathers*, Admin. Proc. Rulings Release No. 6777, 2020 SEC LEXIS 3370 (ALJ July 17, 2020).

¹⁴ *Id.*

¹⁵ *See Pending Admin. Proc.*, Securities Act Release No. 10536, 2018 WL 4003609, at *1 (Aug. 22, 2018).

the undisputed facts asserted by the Division. I elect, however, to rely in reaching findings and conclusions in this initial decision primarily on the supporting evidence submitted by the parties and official notice taken of the dockets in the Civil Case and in Feathers's criminal case, together with the orders, decisions, and proceeding transcripts in those cases.¹⁶ I have applied preponderance of the evidence as the standard of proof.¹⁷

Unless otherwise indicated, the findings of fact are supported by the district court's August 16, 2013 order granting the Commission's motion for summary judgment.¹⁸ The district court's factual findings in deciding summary judgment in the Civil Case cannot be controverted in this proceeding.¹⁹

Feathers established two investment funds in 2007: Investors Prime Fund, LLC, and SBC Portfolio Fund, LLC (together, the Funds). The Funds' offering documents stated that the Funds were managed by Small Business Capital Corporation (SBCC), which Feathers founded. The offering documents stated that SBCC had the "sole authority" to manage the Funds' affairs.²⁰ Feathers and SBCC were the only managers of the Funds. Feathers and his wife were the only signatories on the Funds' and SBCC's bank accounts. Feathers thus controlled SBCC and the Funds.

Feathers and SBCC issued the Funds' securities and solicited investors to invest in the Funds. He paid "investor representatives" a salary and commissions for selling the Funds' securities.²¹ Through Feathers's efforts, the

¹⁶ See *United States v. Feathers*, No. 5:14-cr-531-LHK (N.D. Cal.) (the Criminal Case); 17 C.F.R. § 201.323 (governing official notice). The Division's unopposed request that I take official notice of the docket in the Criminal Case is granted. Feathers's request that I take official notice of filings in the Civil Case is granted.

¹⁷ See *John Francis D'Acquisto*, Investment Advisers Act of 1940 Release No. 1696, 1998 WL 34300389, at *2 (Jan. 21, 1998).

¹⁸ See Bulgozdy Decl., Ex. 2.

¹⁹ *Shreyans Desai*, Exchange Act Release No. 80129, 2017 WL 782152, at *3 (Mar. 1, 2017).

²⁰ Bulgozdy Decl., Ex. 2 at 2.

²¹ *Id.* at 28.

Funds sold over \$46 million of their securities. Neither Feathers nor SBCC ever registered as brokers or dealers.

Feathers prepared offering documents for the Funds from 2009 through 2011. He exercised final approval authority on the offering documents. Except for loans secured by real property, these documents prohibited loans from the Funds to the manager. And Investors Prime's offering documents provided that Investors Prime would pay its audit, tax preparation, and protective advance costs, together with costs to maintain acquired real property. But SBCC would bear all other costs.

The Funds' offering documents also stated that investment decisions would be guided by conservative lending standards. All loans from the Funds would thus be secured by deeds of trust for real property with a loan-to-value ratio of between 65% and 75%. By 2011, Investors Prime's offering materials asserted that all existing loans were secured by "first trust deeds."²² At the same time, Small Business Capital's offering documents said that no loans were outstanding to the manager or its affiliates.

The Funds' offering documents also represented that investor returns on profits would be proportionate to their relative investments. Investors Prime offering documents represented that profits would be "allocated entirely to" investors and Small Business Capital's offering documents said investors would receive a proportionate share of fund income.²³

It turned out that very little of what Feathers asserted was true. From 2009 through 2012, Feathers caused the Funds to transfer over \$7.4 million to SBCC. Feathers did not disclose these transfers to investors.

Feathers used accounting gimmicks to allow the Funds to pay SBCC's management fees, which SBCC was not earning, and to make the transfers appear as loans and thus the Funds' assets. This allowed Feathers to misrepresent the Funds' income, performance, expenses, and liabilities and falsely made it appear that the Funds were generating income. It also allowed the Funds to pay target returns. But because the Funds were not generating profits, the payments were actually made from investor funds.

Contrary to the Funds' offering documents, the transfers were not secured by real property and therefore had no loan-to-value ratio. And they were not guided by conservative lending standards. Statements in Investors Prime's 2011 offering materials that first trust deeds secured all existing loans were

²² *Id.* at 14 (capitalization altered).

²³ *Id.* at 15.

untrue. Similarly untrue were statements in Small Business Capital's 2011 offering documents that no loans were outstanding to the manager or its affiliates.

Feathers knew that he was deceiving investors. In 2010, an auditor discovered the scope of the transfers and told Feathers he could not issue an unqualified audit opinion. Feathers had the auditor issue a qualified opinion instead and did not fix any issues. In 2012, the auditor told Feathers that simply listing something as a loan did not make it so. The auditor also concluded that Feathers was misleading investors and recommended that Feathers retain counsel.

Based on these actions and omissions, the Commission filed an injunctive action against Feathers in 2012, in the United States District Court for the Northern District of California.²⁴ Within a month, the court granted a preliminary injunction and froze the assets of the Funds, SBCC, and Feathers.²⁵ In 2013, the district court granted the Commission's motion for summary judgment and held that Feathers, SBCC, and the Funds committed securities fraud in violation of Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5.²⁶ The court also held that Feathers was liable as a control person for SBCC's violations of these provisions and its operation as an unregistered broker in violation of Exchange Act Section 15(a).²⁷ In November 2013, the court permanently enjoined Feathers from violating these provisions and ordered him to disgorge nearly \$7.5 million plus over \$285,000 in interest.²⁸

Feathers was indicted in 2014 on multiple counts of securities and mail fraud related to his involvement with the Funds, SBCC, and another fund.²⁹ The district court revoked Feathers's bond in 2017, after he e-mailed a threat

²⁴ Complaint, Civil Case (June 21, 2012), ECF No. 1.

²⁵ Preliminary Injunction and Order Appointing Permanent Receiver, Civil Case (July 10, 2012), ECF No. 34.

²⁶ Bulgozdy Decl., Ex. 2, at 29.

²⁷ *Id.*

²⁸ Order Granting in Part and Denying in Part Plaintiff's Motion for Injunctive Relief and Monetary Remedies, Civil Case (Nov. 6, 2013), ECF No. 622.

²⁹ Indictment, Criminal Case (Oct. 29, 2014), ECF No. 1.

to eight people.³⁰ In late 2017, Feathers pleaded guilty to a single count of mail fraud in violation of 18 U.S.C. § 1341.³¹ The district court sentenced Feathers in 2018 to 33 months' imprisonment.³²

Conclusions of Law

1. *Summary disposition is appropriate*

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.”³³ The Commission has upheld summary disposition in cases such as this one, where a court has enjoined or convicted a respondent and the sole determination concerns the appropriate sanction.³⁴

The Division moves for the entry of industry and penny-stock bars against Feathers. In opposition to the Division's motion, Feathers does not dispute the Division's assertion of undisputed facts and instead focuses on whether the district court should have entered an injunction against him. But, as I've explained to Feathers, he cannot collaterally attack the district court's orders

³⁰ Minute Entry for Bond Hearing, Criminal Case (Mar. 23, 2017), ECF No. 109; Bulgozdy Decl., Ex. 3.

³¹ Minute Entry for Change of Plea Hearing, Criminal Case (Dec. 20, 2017), ECF No. 161.

³² Judgment in a Criminal Case at 2, Criminal Case (Mar. 9, 2018), ECF No. 170. Although this proceeding was initiated based on Feathers's injunction and not his conviction—the district court entered judgment on Feathers's conviction years after the Commission issued the OIP—it is still appropriate to consider Feathers's conviction in assessing whether the public interest supports barring him from the securities industry. *See Toby G. Scammell*, Advisers Act Release No. 3961, 2014 WL 5493265, at *4 & n.22 (Oct. 29, 2014), *vacated in part on other grounds*, Advisers Act Release No. 5272, 2019 WL 2775920 (July 2, 2019).

³³ 17 C.F.R. § 201.250(b).

³⁴ *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).

in this forum.³⁵ So Feathers’s opposition provides no basis to deny the Division’s motion. And the record evidence together with the district court’s orders provide a sufficient basis to decide this matter in the Division’s favor.³⁶

2. *The public interest supports imposing collateral bars*

Under the Exchange Act, the Commission may impose collateral and penny-stock bars³⁷ against Feathers if, as is relevant here, (1) he was associated with or seeking to become associated with a broker or dealer at the time of his misconduct; (2) he was enjoined from “any conduct ... in connection with the purchase or sale of any security”; and (3) imposing bars is in the public interest.³⁸

As to the first factor, the district court held that SBCC acted as an unregistered broker, in violation of Exchange Act Section 15(a), and found Feathers responsible as a control person for SBCC’s activity.³⁹ Because Feathers controlled SBCC, he was associated with it.⁴⁰ And that association coincided with Feathers’s fraudulent misconduct. The first factor is satisfied.⁴¹

³⁵ See Prehearing Tr. 56 (“I’m not reviewing the District Court’s decision to issue an injunction, because I’m bound to take that decision as a given.”), 57–58, 63–65; see also *Mark Feathers*, Admin. Proc. Release No. 6752, 2020 SEC LEXIS 1066, at *2 n.2, *4 n.13 (ALJ Apr. 17, 2020).

³⁶ 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)).

³⁷ A collateral bar, also called 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 *Scammell*, 2014 WL 5493265, at *1 & n.1.

³⁸ 15 U.S.C. § 78o(b)(4)(C), (6)(A)(iii).

³⁹ Bulgozdy Decl., Ex. 2 at 29.

⁴⁰ See 15 U.S.C. § 78c(a)(18) (defining, for purposes of the Exchange Act, the phrase *person associated with a broker or dealer* to include “any person directly or indirectly controlling ... such broker or dealer”).

⁴¹ See *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *8 & n.68 (July 26, 2013) (holding that the Commission may

As to the second factor, the district court permanently enjoined Feathers from committing securities fraud related to the purchase or sale of securities and from acting as an unregistered broker.⁴² The court thus enjoined Feathers from “conduct ... in connection with the purchase or sale of any security.” This injunction satisfies the requirements of the second factor.

Finally, to decide whether imposing bars would be in the public interest, I must consider the factors discussed in *Steadman v. SEC*.⁴³ These public-interest factors 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

The Commission also considers the deterrent effect of administrative sanctions.⁴⁵ This public interest inquiry is “flexible ... and no one factor is dispositive.”⁴⁶ Before imposing a bar, an administrative law judge must

“sanction an associated person of an unregistered broker-dealer ... in a follow-on administrative proceeding”).

⁴² Order Granting in Part and Denying in Part Plaintiff’s Motion for Injunctive Relief and Monetary Remedies at 3–4, Civil Case (Nov. 6, 2013), ECF. No. 622 (enjoining Feathers from violating Securities Act Section 17(a), Exchange Act Sections 10(b) and 15(a), and Exchange Act Rule 10b-5).

⁴³ 603 F.2d 1126, 1140 (5th Cir. 1979), *aff’d on other grounds*, 450 U.S. 91 (1981); *see Scammell*, 2014 WL 5493265, at *5.

⁴⁴ *David R. Wulf*, Exchange Act Release No. 77411, 2016 WL 1085661, at *4 (Mar. 21, 2016), *vacated in part on other grounds*, Exchange Act Release No. 86309, 2019 WL 2903943 (July 5, 2019).

⁴⁵ *Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *11 n.72 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). General deterrence is relevant but not determinative of whether the public interest supports imposing a bar. *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1066 (D.C. Cir. 2007).

⁴⁶ *Kornman*, 2009 WL 367635, at *6 (quoting *David Henry Disraeli*, Securities Act Release No. 8880, 2007 WL 4481515, at *15 (Dec. 21, 2007), *pet. denied*, 334 F. App’x 334 (D.C. Cir. 2009)).

specifically determine why doing so would serve the Commission's interests in protecting the investing public.⁴⁷

The Commission has explained that because “[t]he securities industry presents continual opportunities for dishonesty and abuse,”⁴⁸ an industry participant’s “propensity for dishonest behavior is of particular concern.”⁴⁹ The industry must therefore “heavily depend[] [on] the integrity of its participants.”⁵⁰ Given these facts and the Commission’s investor-protection mission, the Commission has stated that “in most fraud cases,” the public-interest analysis will warrant a “severe sanction.”⁵¹

Here, the public-interest factors weigh in favor of industry and penny-stock bars. Feathers repeatedly lied to investors. He told them that the Funds would invest conservatively. And except for loans secured by real property, that the Funds would not loan money to SBCC. But after making these representations, Feathers caused the Funds to transfer over \$7.4 million to SBCC. Additionally, even if the transfers were loans, as Feathers represented to the Funds’ auditor, they were unsecured. Feathers then lied to prospective investors in Investors Prime by declaring that first trust deeds secured all existing loans. And he lied to Small Business Capital’s investors by asserting that no loans were outstanding to the manager or its affiliates.

Feathers also used his characterization of the transfers as loans to make a series of other false representations. By calling the transfers loans, Feathers

⁴⁷ See *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 (Mar. 7, 2014) (“[A]lthough the initial decision discussed the public interest factors in general terms, it did not sufficiently articulate why the facts and circumstances of this case warrant the industry-wide bars imposed or how such bars ‘protect the trading public from further harm’ by this respondent.”), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 WL 3030883 (May 26, 2016).

⁴⁸ *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *7 (Sept. 26, 2007), *pet. denied*, 548 F.3d 129 (D.C. Cir. 2008).

⁴⁹ *Frank Kufrovich*, Exchange Act Release No. 45437, 2002 WL 215446, at *5 (Feb. 13, 2002).

⁵⁰ *Adrian Antoniu*, Exchange Act Release No. 25169, 1987 WL 110283, at *6 (Dec. 3, 1987).

⁵¹ *Siris*, 2013 WL 6528874, at *11 n.71 (quoting *Gibson*, 2008 WL 294717, at *7).

could label the transfers as the Funds' assets. This allowed him to lie about the Funds' income, performance, expenses, and liabilities. Feathers was thus able to claim that the Funds were generating income when they were not doing so. And by falsely claiming income, Feathers could pay returns. But because the Funds were not generating profits, Feathers made the payments from investor funds.

By lying to investors about what he would do with their investments and about fund performance, using investor capital to make prohibited transfers to the Funds' manager—effectively to himself—and then using investor funds to make Ponzi-style payments to earlier investors, Feathers behaved in a manner that is, by any measure, egregious.

But there is more. The district court also enjoined Feathers from violating Section 15(a) of the Exchange Act based on his control-person responsibility for SBCC's unregistered broker activity. Section 15's registration requirement "is 'of ... utmost importance in effecting the purposes of the [Exchange] Act' because it enables the SEC 'to exercise discipline over those who may engage in the securities business and it establishes necessary standards with respect to training, experience, and records.'"⁵² Feathers's failure to register, which frustrated this important effort, bolsters the determination that Feathers's conduct was egregious.

Feathers's misconduct was also recurrent. He made multiple misstatements in multiple documents over several years.

Feathers acted with a high degree of scienter. He was responsible for the contents of the Funds' offering documents and thus knew he could not simply make unsecured transfers from the Funds to SBCC. And even if he did not know this at first, he knew it by 2010, when the Funds' auditor discovered the scope of the transfers and told Feathers he could not issue an unqualified audit opinion. Moreover, when it permanently enjoined Feathers, the district court held that he acted with scienter. And when he pleaded guilty to mail fraud,

⁵² *SEC v. Bengier*, 697 F. Supp. 2d 932, 944 (N.D. Ill. 2010) (quoting *Celsion Corp. v. Stearns Mgmt. Corp.*, 157 F. Supp. 2d 942, 947 (N.D. Ill. 2001)); see *Allen M. Perres*, Securities Act Release No. 10287, 2017 WL 280080, at *3 (Jan. 23, 2017) (quoting *Bengier*), *pet. denied*, 695 F. App'x 980 (7th Cir. 2017).

Feathers necessarily admitted that he acted with the specific intent to deceive or defraud,⁵³ and thus with scienter.⁵⁴

Feathers has made no assurances, sincere or otherwise, against future violations and has done nothing to show that he recognizes the wrongfulness of his conduct. To the contrary, he has tried to show that he is the victim and has done nothing wrong. As the district court noted during Feathers's sentencing hearing, Feathers was extremely litigious.⁵⁵ The district court detailed how Feathers attacked the receiver in the Civil Case by filing a meritless bar complaint against the receiver's counsel and filing a meritless complaint against the receiver with the Chartered Financial Analyst Institute.⁵⁶ Feathers also harassed the receiver by sending e-mails hurling "false accusations, personal attacks," and about 35 threats to bring legal action.⁵⁷ And during his criminal case, Feathers e-mailed his counsel, four Commission attorneys, the receiver, and the receiver's counsel, threatening physical injury to anyone who uttered the word "Ponzi" and stating, "you have been able to introduce prejudice with the use of the word Ponzi in public and in hidden court pleadings. You won't get away with it again (with me at least)."⁵⁸ Finally, during this proceeding, Feathers has continually tried to attack the basis for the district court's injunction, launching accusations at various participants in the Civil Case. In short, Feathers has shown that he does not accept the district court's judgment or responsibility for his actions.

Feathers's refusal to accept responsibility for his actions, particularly given that his conduct was egregious and that he acted with scienter, makes it likely that he would engage in more misconduct if he were allowed to remain

⁵³ *United States v. Milwitt*, 475 F.3d 1150, 1156 (9th Cir. 2007); see Bulgozdy Decl. Ex. 4, Sentencing Hr'g Tr. at 46, Criminal Case (Mar. 7, 2018), ECF No. 192 (stating that when he pleaded guilty, Feathers admitted that he "knowingly participated in the scheme to defraud" and "acted with intent to defraud").

⁵⁴ See *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976) ("[T]he term 'scienter' refers to a mental state embracing intent to deceive, manipulate, or defraud.").

⁵⁵ Bulgozdy Decl. Ex. 4, Sentencing Hr'g Tr. at 20–22.

⁵⁶ *Id.* at 20–22, 46–47.

⁵⁷ *Id.* at 20–22, 46–47.

⁵⁸ See Bulgozdy Decl., Ex. 3; Bulgozdy Decl., Ex. 4, Sentencing Hr'g Tr. at 46.

in the securities industry.⁵⁹ Indeed, Feathers’s occupation would present him with “opportunities for future illegal conduct.”⁶⁰ His refusal to accept responsibility and attempts to shift blame must therefore weigh heavily against him in the public-interest analysis.⁶¹

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

In sum, Feathers’s fraudulent conduct was egregious and if he managed to remain in the industry, he would have the opportunity engage in more misconduct. The Commission’s interest in protecting the investing public would be served by not allowing an individual to remain in the industry who (1) has shown that he is willing to deceive investors about what he was doing with their investments, and (2) has shown—by refusing to understand the wrongfulness of his actions—that he would likely engage in misconduct again.

3. Feathers has presented nothing to warrant denying the Division’s motion for summary disposition

In opposition to the Division’s motion, Feathers ignores the relevant issues; he does not dispute that the district court enjoined him or the public interest supports imposition of industry and penny-stock bars.⁶² He also does

⁵⁹ See *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004) (holding that a finding that conduct was egregious “justifies the inference” that misconduct will recur); *Michael J. Markowski*, Exchange Act Release No. 44086, 2001 WL 267660, at *4 (Mar. 20, 2001) (holding that a respondent’s “failure to recognize the wrongfulness of his conduct presents a significant risk that, given [the] opportunity [to return to the industry], he would commit further misconduct in the future”).

⁶⁰ *John W. Lawton*, Advisers Act Release No. 3513, 2012 WL 6208750, at *11 (Dec. 13, 2012), *vacated in part on other grounds*, Advisers Act Release No. 4402, 2016 WL 3030847 (May 27, 2016).

⁶¹ See *Francis V. Lorenzo*, Exchange Act Release No. 74836, 2015 WL 1927763, at *13 & n.46 (Apr. 29, 2015), *vacated in part on other grounds*, 872 F.3d 578 (D.C. Cir. 2017), *aff’d*, 139 S. Ct. 1094 (2019).

⁶² In a prior motion, Feathers argued that he was never a broker or dealer and was only a lender who raised capital as an issuer. Respondent’s Request to Terminate Hearings Due to Governmental Abuse of Power, and Violations of the APA (July 30, 2020). But he cannot dispute that he was associated with a broker within the meaning of the Exchange Act. The district court explicitly found in the Civil Case that “SBCC operated as an unregistered broker-dealer

not dispute any of the Division’s asserted undisputed facts. Instead, he attacks the district court’s injunction and asserts that because he recently moved in the Civil Case under Federal Rule of Civil Procedure 60, “it is premature to discuss sanctions.” As noted, Feathers’s attack in this forum on the district court’s injunctive order is doomed. And the pendency of a Rule 60 motion—particularly one filed nearly seven years after entry of the injunctive judgment—is not a basis to delay this proceeding.⁶³

Feathers has also affirmatively moved for summary disposition. In his motion, Feathers attacks the conduct of several government participants in the Civil Case, references a report prepared by Annette Stalker, which he offered during the Criminal Case, and quotes one investor who spoke during Feathers’s sentencing hearing.

Feathers, however, cannot attack in this forum the conduct of Commission participants in the Civil Case.⁶⁴ Claims of this nature must be adjudicated by the district court.⁶⁵

The Stalker report has been the subject of multiple motions and orders in this proceeding. Initially, I observed in an April 2020 order that “[b]ecause the content of the report ... contradicts findings made by the district court in the civil case that is the predicate for this ... proceeding, it is not clear that I could properly consider it.”⁶⁶ And although I declined to rule on its admissibility because Feathers had not yet offered the report into evidence, I explained that if he offered it as an expert report, he would have to comply with the Commission’s Rule of Practice governing experts.⁶⁷ Otherwise Feathers would

in violation of Section 15(a) of the Exchange Act; and that Feathers” is “liable as [a] control person[] under Section 20(a) of the Exchange Act.” Bulgozdy Decl., Ex. 2 at 29.

⁶³ Cf. *Michael T. Studer*, Exchange Act Release No. 50411, 2004 WL 2104496, at *2 (Sept. 20, 2004) (“Neither Studer’s motion for a new trial nor his pending appeal of the injunctive court’s decision affects the finality and preclusive effect in this proceeding of the court’s determinations.”), *aff’d*, 148 F. App’x 58 (2d Cir. 2005).

⁶⁴ See *Harold F. Harris*, Exchange Act Release No. 53122A, 2006 WL 307856, at *6 (Jan. 13, 2006).

⁶⁵ *Id.*

⁶⁶ *Feathers*, 2020 SEC LEXIS 1066, at *2.

⁶⁷ *Id.* at *3 (citing 17 C.F.R. § 201.222(b)).

need to be ready to show that the report is relevant, material, not unduly repetitious, and reliable, especially as it might relate to the public-interest factors.⁶⁸

This prompted Feathers to ask for a ruling on the Stalker report's admissibility. But because he provided no basis for me to rule, I denied his motion as premature and explained that if he wanted to rely on it for purposes of summary disposition, he needed to "(1) show that the report is relevant; and (2) submit a sworn declaration or affidavit from Stalker showing that if called to testify at a merits hearing, she would testify in a manner consistent with her report."⁶⁹

Feathers moved to reconsider but in doing so, he tacitly conceded the report's irrelevance by arguing that it "wholly rebuts the very basis for" the district court's underlying judgment.⁷⁰ Because he provided no basis to conclude that he should be exempt from the rules of practice, and thus no basis to reconsider, I denied his motion.⁷¹

This brings us to Feathers's current reference in his motion for summary disposition to the Stalker report. Feathers asserts that the report contradicts the opinions offered by the Commission's experts during the Civil Case.⁷² But attacking the Commission's experts' opinions could only be relevant to an attack on the district court's injunction, which I cannot entertain. And aside from his assertion about how the Stalker report contradicts the Commission's experts, Feathers makes no attempt to show how the report is relevant, to the public-interest inquiry or otherwise. So he has provided no basis for me to consider it.

Finally, Syd Raineri, the investor witness who spoke during Feathers's sentencing hearing, contended that (1) Feathers was wrongly accused, (2) the Funds would have fully paid all investors if the Funds did not have to pay the receiver, (3) the "government overstepped [its] authority" because of the

⁶⁸ *Id.* (citing 17 C.F.R. § 201.320).

⁶⁹ *Mark Feathers*, Admin. Proc. Rulings Release No. 6768, 2020 SEC LEXIS 2561, at *3 (ALJ June 12, 2020).

⁷⁰ *Mark Feathers*, Admin Proc. Rulings Release No. 6771, 2020 SEC LEXIS 3125, at *1 (ALJ July 1, 2020).

⁷¹ *Id.* at *1–2.

⁷² Resp't Mot. Summ. Disp. at 1–2.

Madoff scandal, and (4) Feathers pleaded guilty only because he “wanted to get it over with” and was worn down by “[t]he fact that he had so many litigated matters.”⁷³ But none of these opinions help Feathers. Feathers’s guilty plea, which he cannot attack in this forum, contradicts Raineri’s first and fourth assertions. The third has no bearing on this matter. This leaves the second opinion, which could be somewhat relevant to the public-interest factors, but Feathers provides nothing to explain how or why Raineri reached his conclusion.

Feathers’s motion for summary disposition is thus DENIED.⁷⁴

4. *Feathers’s remaining motions are denied*

Since being assigned to this matter I have adjudicated several of Feathers’s motions. Feathers has, however, filed additional motions, many of which repeat arguments presented in already decided motions. I have deferred ruling on many of Feathers’s pending motions. For the sake of clarity, all of Feathers’s pending motions, including his multiple and repeated stay motions⁷⁵ and motions for sanctions and to refer various matters to the Office of Inspector General,⁷⁶ are DENIED.

⁷³ *Id.* at 2; Bulgozdy Decl., Ex. 4, Sentencing Hr’g Tr. at 29–33.

⁷⁴ *See* 17 C.F.R. § 201.250(b) (requiring a summary-disposition movant to show that “there is no genuine issue with regard to any material fact and that the movant is entitled to a summary disposition as a matter of law”).

⁷⁵ Feathers at first moved for a stay pending adjudication of his request for a subpoena directed to the FDIC. Although I’ve certified that request to the Commission, Feathers withdrew his motion for a stay pending resolution of his subpoena request. Reply & Mot. to Withdraw (May 22, 2020); *see Mark Feathers*, Admin. Proc. Rulings Release No. 6762, 2020 SEC LEXIS 3215, at *2 (ALJ May 29, 2020). There is therefore no need to delay this proceeding while the Commission decides whether to pursue the documents Feathers seeks.

⁷⁶ Feathers seeks sanctions against Division counsel for a misstatement in a motion in the Civil Case in 2012. In recommending the appointment of a receiver, counsel erroneously stated that the receiver “is a licensed CPA” rather than CFA. Recommendation by Plaintiff Securities and Exchange Commission that Thomas A. Seaman Be Appointed Receiver at 2, Civil Case (June 21, 2012), ECF No. 6. Counsel acknowledged the mistake, and—months before it permanently enjoined Feathers—the district court accepted that the mistake was a typo, found no prejudice, and denied Feathers’s motion to dismiss and for sanctions based on the error. Mot. Hr’g Tr. at 59–60, Civil Case (May 10, 2013), ECF No. 541. This issue has already been resolved by the

Order

The Division's motion for summary disposition is GRANTED.

Under Section 15(b) of the Securities Exchange Act of 1934, Mark Feathers is BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Under Section 15(b) of the Securities Exchange Act of 1934, Mark Feathers is BARRED from participating in an offering of any penny stock, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance of trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

This initial decision will become effective in accordance with and subject to the provisions of Rule 360.⁷⁷ 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 move to correct a manifest error of fact within ten days of the initial decision, under Rule 111.⁷⁸ If a motion to correct a manifest error of fact is filed by a party, then a party will 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 petitions for review or moves 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 will not become final as to that party.

James E. Grimes
Administrative Law Judge

Served by e-mail on all participants.

district court, but, even if it were not, I cannot adjudicate in this administrative proceeding questions about litigation conduct in other forums. *See Harris*, 2006 WL 307856, at *6.

⁷⁷ *See* 17 C.F.R. § 201.360.

⁷⁸ *See* 17 C.F.R. § 201.111.