UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70140 / August 8, 2013

Admin. Proc. File No. 3-15161

In the Matter of

STEPHANIE HIBLER
1277 South Beverly Glen Boulevard, Suite #202
Los Angeles, CA 90024-5223

ORDER GRANTING IN PART AND DENYING IN PART APPLICATION TO VACATE ADMINISTRATIVE BAR ORDER

I.

Stephanie Hibler seeks to vacate an administrative bar order based on a 1981 criminal conviction for securities fraud. The Division of Enforcement opposes Hibler's request to the extent that she seeks to vacate the broker and dealer bars but supports the grant of relief as to the investment adviser and investment company bars. As discussed below, we have determined to grant in part and deny in part Hibler's request.

II.

On December 7, 1981, Hibler was sentenced after pleading guilty to a one-count information charging her with violating the antifraud provisions of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.[1] The violations identified in the information occurred in connection with the sale of Westamerica Automotive Corporation common stock by Hibler while she was employed as a sales representative and turned on Hibler's acceptance of secret, substantial payments from an affiliate of Westamerica in return for selling stock of that company to her customers.[2] Hibler was sentenced to probation for five years and 1,000 hours of public service.[3] Based on that criminal proceeding, on June 2, 1982, administrative proceedings were instituted against Hibler,[4] and, on December 15, 1982, we

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1 *United States v. Hibler (C.D. Cal., CR-81-931)*, Lit. Release No. 9529, 1981 SEC LEXIS 108, at *1 (Dec. 16, 1981).

2 *Id.*

3 *See NASD, Inc.*, Exchange Act Release No. 22067, 48 SEC 169, 1985 SEC LEXIS 1472, at *1 (May 23, 1985).

4 *Stephanie Hibler*, Exchange Act Release No. 18786, 1982 SEC LEXIS 1565, at *1 (June 2, 1982).

entered a consent order barring Hibler "from being associated with any broker or dealer or investment adviser or investment company or affiliate of a broker or dealer or investment adviser or investment company."[5]

On May 23, 1985, we denied an application by NASD seeking our consent to allow Hibler to associate with two NASD member firms.[6] We found then that such relief was not in the public interest given, among other things, the seriousness of Hibler's misconduct and the short period of time that had then passed since we had imposed the bars.[7] Hibler now moves to lift the bars in their entirety.

III.

In reviewing requests to lift or modify administrative bar orders, we consider whether, "under all the facts and circumstances presented, it is consistent with the public interest and investor protection to permit the petitioner to function in the industry without the safeguards provided by the bar."[8] Maintaining a bar serves the public interest and investor protection by ensuring that the Commission "retains its continuing control over [a] barred individual['s] activities."[9] Thus, relief is appropriate only in "compelling circumstances" and, in the usual case, we will retain administrative bars in place.[10] In determining whether to grant relief, we are guided by a number of relevant factors, including whether "there exists any . . . circumstance that would cause the requested relief from the administrative bar to be inconsistent with the public interest or the protection of investors."[11]

IV.

Hibler presents various arguments in support of her application. Unlike in 1985, when the Commission denied NASD's application to permit Hibler to associate with two member firms

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5 *Stephanie Hibler*, Exchange Act Release No. 19338, 1982 SEC LEXIS 140, at *2-3 (Dec. 15, 1982).

6 *NASD, Inc.*, 1985 SEC LEXIS 1472.

7 *Id.* at *6.

8 *Ciro Cozzolino*, Exchange Act Release No. 49001, 57 SEC 175, 2003 SEC LEXIS 3083, at *12 (Dec. 29, 2003). The same day we issued *Cozzolino*, we also issued two other decisions announcing and applying the same standard. *See Edward I. Frankel*, Exchange Act Release No. 49002, 57 SEC 186, 2003 SEC LEXIS 3086 (Dec. 29, 2003); *Stephen S. Wien*, Exchange Act Release No. 49000, 57 SEC 162, 2003 SEC LEXIS 3087 (Dec. 29, 2003).

9 *Cozzolino*, 2003 SEC LEXIS 3083, at *14.

10 *Id.* at *13-14. In adopting our present standard, we recognized that significant Commission interests would be impaired if a modification standard too readily lifted consent orders in light of the significant benefits that both violators and the Commission receive from settlement. *Id.* at *14 n.20. We also observed that our approach reflects the need in the usual case for finality in administrative adjudication. *Id.*

11 *Id.* at *13. The relevant factors also include "the nature of the misconduct at issue in the underlying matter;" "the time that has passed since issuance of the administrative bar;" "the compliance record of, and any regulatory interest in, the petitioner since issuance of the administrative bar;" "the age and securities industry experience of the petitioner, and the extent to which the Commission has granted prior relief from the administrative bar;" "whether the petitioner has identified verifiable, unanticipated consequences of the bar;" and "the position and persuasiveness of the Division of Enforcement, as expressed in response to the petition for relief." *Id.*

based in part on the short period of time that had elapsed since imposition of the bars, it has now been over thirty years since the bar order was entered. Hibler asserts that, since that time, she has complied with the order, has been employed in other licensed professions (insurance and real estate) without incident, has not been the subject of any other governmental or regulatory actions, and has continued a fifty-year record of charitable service. Hibler also asserts that the initial bar order, to which she consented, was excessive in light of the fact that, "[a]t the time she pled guilty to the criminal charge in 1981, [Hibler] did not realize that it would also lead to proceedings against her by the Commission a few months later."[12] In addition, Hibler argues that the Commission should consider that the presiding judge in her criminal case observed that she "was never trained in the use or in the effectiveness of [Rule] 10b-5 or [Section 10(b) of the Exchange Act], and that she should have special consideration"[13] and that he wrote a letter to her employer urging it not to terminate her employment.[14] Based on these assertions, Hibler argues that it is not in the public interest to maintain the bar order against her.

In response, the Division of Enforcement recommends that we deny the request to vacate the broker and dealer bars because Hibler has failed to demonstrate the compelling circumstances necessary to obtain relief from an administrative bar. Citing our precedent,[15] the Division asserts that, although Hibler can show the passage of time, this is insufficient to establish that her bar order should be vacated. Instead, the Division asserts that, because she has not previously obtained Commission consent to associate with a regulated entity and thus cannot establish a "track record" of association without incident, Hibler falls short of what we previously have found to constitute compelling circumstances sufficient to vacate a bar order.[16]

The Division recommends, however, that we vacate the collateral portion of Hibler's bar order, as we have done in prior instances[17] following the D.C. Circuit's decision in *Teicher v.*

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[12] Hibler Appl. at 5.

[13] Rep.'s Tr. of Sentencing H'rg at 3-4, *United States v. Hibler*, Case No. CR-81-931-AAH (C.D. Cal. Dec. 7, 1981).

[14] Hibler also explains that she aspires to be engaged as a solicitor of separate investment accounts for one or more licensed investment advisers under Commission Rule 206(4)-3. *See* 17 C.F.R. § 275.206(4)-3. That rule prohibits investment advisers from paying cash fees to solicitors for solicitation activities unless the conditions specified in the rule are satisfied. Because Hibler was convicted of willfully violating the Exchange Act, she may not act as a solicitor under Rule 206(4)-3. *See* 17 C.F.R. § 275.206(4)-3(a)(ii)(C) (prohibiting persons convicted of engaging in conduct referenced in § 203(e)(5) of the Investment Advisers Act from working as solicitors); 15 U.S.C. § 80b-3(e)(5) (referencing conduct that "willfully violated any provision of . . . the Securities Exchange Act").

[15] *See, e.g.*, *Frankel*, 2003 SEC LEXIS 3086, at *16 ("It has been 31 years since the consent order issued–an amount of time that, while lengthy, does not, standing alone, weigh significantly in favor of relief.").

[16] *See Jesse M. Townsley, Jr.*, Exchange Act Release No. 52161, 58 SEC 743, 2005 SEC LEXIS 1919, at *8 (July 29, 2005) ("We generally first grant incremental relief in our cases vacating bars.").

[17] *See, e.g.*, *Mark S. Parnass*, Exchange Act Release No. 65261, 2011 SEC LEXIS 3213, at *16 (Sept. 2, 2011); *Townsley*, 2005 SEC LEXIS 1919, at *8-9; *Salim B. Lewis*, Exchange Act Release No. 51817, 58 SEC 491, 2005 SEC LEXIS 1360, at *24 (June 10, 2005).

SEC.[18] This would remove the prohibition on Hibler's association with investment advisers and investment companies under the bar order.

V.

Based on our consideration of the record and of the factors identified in relevant precedent, we conclude that Hibler has failed to carry her burden of demonstrating the compelling circumstances necessary to vacate the bar order in its entirety. We find the Division's arguments persuasive.[19] While thirty years have passed since the bar order was entered and Hibler asserts that she has worked in other licensed capacities without incident during that time, Hibler has not obtained permission to associate with a broker or dealer in any capacity since the order was entered.[20] Thus, she cannot demonstrate a record of compliance in this capacity. Lifting the broker and dealer bars now would permit Hibler to engage in activities restricted by those bars without a prior period of demonstrated compliance with applicable law. In addition, Hibler's misconduct was very serious and she has not identified any unanticipated consequences of the bar. Accordingly, in light of our precedent and the Division's recommendation, we vacate the bar order to the extent that it prohibits Hibler from associating with investment advisers or investment companies but maintain the order to the extent it applies to brokers or dealers.[21]

By the Commission.

Elizabeth M. Murphy
Secretary

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[18] 177 F.3d 1016, 1021-22 (D.C. Cir. 1999) (vacating collateral bar prohibiting association with investment adviser as beyond the scope of the Commission's statutory authority when bar was ordered). *See also William Masucci*, Exchange Act Release No. 53121, 58 SEC 1115, 2006 SEC LEXIS 3190, at *1 n.1 (Jan. 13, 2006) (explaining that *Teicher* held that the Commission could "not impose a collateral bar on association with an investment adviser or investment company in a litigated proceeding instituted pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934").

[19] Hibler chose not to file a reply brief addressing the Division's arguments in opposition to her application.

[20] For this reason, Hibler's relevant securities industry experience effectively is limited to her experience prior to the bar order. Neither Hibler nor the Division argues that Hibler's age, one of the factors identified in prior Commission decisions, should factor in our analysis.

[21] We note that portions of the Division's brief could be construed as suggesting that Hibler may be able to obtain "the ultimate relief she seeks–the ability to work as a solicitor for one or more licensed investment advisers" through no-action relief. Resp. of the Division of Enforcement to Mot. to Set Aside Admin. Bar Order at 1; *see also id.* at 8. We further note, however, that the circumstances addressed in the sole no action letter that the Division cites in support of its statements, *Fahnestock & Co., Inc.*, 2003 SEC No-Act. LEXIS 550 (Apr. 21, 2003), could be deemed to be readily distinguishable from Hibler's circumstances. Accordingly, we caution Hibler not to rely on such an interpretation of the Division's brief regarding the availability of no action relief, which in the first instance would be directed to the Division of Investment Management, not the Division of Enforcement.