

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2171/December 29, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16167

In the Matter of

RANDAL KENT HANSEN

ORDER

This proceeding was instituted to determine whether Respondent Randal Kent Hansen should be suspended or permanently barred from participation in the securities industry. *See* Order Instituting Administrative Proceedings (OIP); 15 U.S.C. §§ 78o(b), 80b-3(f). The OIP alleges that Hansen was convicted in the United States District Court for the District of South Dakota of twenty-one counts of mail fraud, four counts of wire fraud, and one count of conspiracy to commit mail and wire fraud. OIP at 1. The OIP further alleges that the district court entered judgment in May and June 2014, and sentenced Hansen to 108 months' imprisonment, three years of supervised release, and restitution of \$17,514,258.89. *Id.* at 2.

On November 26, 2014, the Division of Enforcement moved for summary disposition, asking for imposition of a permanent collateral bar. Motion at 4-7. In support of its motion, the Division submitted a minute entry from Hansen's trial, the judgment issued by the district court, and a second superseding indictment. Hansen filed his opposition on December 15, 2014, and asked that the Division's motion be held in abeyance until his appeal has been heard. Opp. at 1. I deny Hansen's request because the Commission has repeatedly held that the pendency of an appeal is not grounds to defer decision in an administrative proceeding. *Joseph P. Galluzzi*, Securities Exchange Act of 1934 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 nn.15 & 17 (Sept. 17, 1992), *aff'd*, 36F.3d 86 (11th Cir. 1994).

There are three statutory requirements that must be satisfied in order to impose a permanent collateral bar. The Division must demonstrate that: (1) at the time of his misconduct, Hansen was associated with a broker, dealer, or investment adviser; (2) Hansen has been convicted of an offense that (a) involved the purchase or sale of any security; (b) "arises out of the conduct of the business of a broker, dealer," or "investment adviser;" (c) "involves the larceny, theft, . . . fraudulent conversion, or misappropriation of funds;" or (d) is a violation of 15 U.S.C. §§ 1341 or 1343; and (3) imposition of the bar is in the public interest. 15 U.S.C. §§ 78o(b)(4)(B)(i)-(iv), (6)(A)(ii), 80b-3(e)(2)(A)-(D), 80b-3(f).

There is no question that the second factor is met in this case. Hansen's judgment reflects that he was convicted of violating 18 U.S.C. §§ 1341 and 1343. Motion at Exhibit 2. The Division's evidence, however, does not establish the first or third factors. It does not show that Hansen was associated with a broker, dealer, or investment adviser and it is insufficient to allow me to determine whether imposition of the bar is in the public interest. See *Toby G. Scammell*, Investment Advisers Act of 1940 Release No. 3961, 2014 SEC LEXIS 4193, at *23 (Oct. 29, 2014) (discussing public interest factors enumerated in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981)).

The Division principally relies on Hansen's judgment of conviction and his second superseding indictment. Although the judgment demonstrates the fact of Hansen's conviction and the amount of restitution he must pay, it does not demonstrate the first or third factors the Division must also establish. The indictment simply contains allegations; it contains no evidence. And unlike in the case of a guilty plea, which constitutes an admission of the facts alleged in an indictment, *United States v. Hill*, 53 F.3d 1151, 1155 (10th Cir. 1995), a general jury verdict of guilt establishes only those "issues which were essential to the verdict," *Emich Motors Corp. v. Gen. Motors Corp.*, 340 U.S. 558, 569 (1951); see *Eric S. Butler*, Exchange Act Release No. 65204, 2011 SEC LEXIS 3002, at *14 n.23 (Aug. 26, 2011) (quoting *United States v. Fabric Garment Co.*, 366 F.2d 530, 534 (2d Cir. 1966) for the proposition that "[i]n the case of a criminal conviction based on a jury verdict of guilty, issues which were essential to the verdict must be regarded as having been determined by the judgment"); *William F. Lincoln*, Exchange Act Release No. 39629, 1998 SEC LEXIS 193, at *2 n.3 (Feb. 9, 1998, as corrected Feb. 12, 1998).

Showing that Hansen was associated with a broker, dealer, or investment adviser was not essential to establishing Hansen's guilt under 18 U.S.C. §§ 1341 or 1343. The same can be said with regard to the factors that must be considered in determining whether the public interest weighs in favor of imposing a collateral bar. See *Steadman*, 603 F.2d at 1140. Reliance on the indictment without evidence showing that the allegations contained in it were determined by the judgment is thus inappropriate.¹ See *Eric S. Butler*, 2011 SEC LEXIS 3002, at *14 n.23 (relying on an indictment in conjunction with jury instructions and Second Circuit decision).

Given the foregoing, the Division's motion for summary disposition is DENIED without prejudice to renewal by January 12, 2015. If the Division renews its motion, it may supplement its motion with additional evidence, including the transcript of Hansen's sentencing hearing, the jury instructions in his case, any sentencing memorandum he submitted, any order issued by the district court, or any other evidence the Division deems appropriate to support its burden. Hansen may file a renewed opposition by January 26, 2015.

¹ In *Ross Mandell*, the Commission stated that its "summary of Mandell's conduct" was based on "the allegations in the superseding indictment underlying his criminal conviction." Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *10 n.13 (Mar. 7, 2014). Inasmuch as the Commission did not address precedent concerning the propriety of relying solely on language in an indictment in the context of a general jury verdict, I do not regard this footnote as binding authority that would permit me to rely solely on Hansen's indictment.

In the event the Division decides to forego the opportunity to renew its motion, a hearing will be held in this matter beginning on a date to be determined.

SO ORDERED.

James E. Grimes
Administrative Law Judge