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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3717/March 16, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-16893

In the Matter of JAMES A. EVANS, JR.	ORDER DENYING MOTION FOR SANCTIONS WITHOUT PREJUDICE AND SCHEDULING PREHEARING CONFERENCE

On October 13, 2015, the Securities and Exchange Commission issued an order instituting proceedings (OIP) against James A. Evans, Jr., pursuant to Section 203(f) of the Investment Advisers Act of 1940. This proceeding is a follow-on proceeding based on *SEC v. James A. Evans, Jr.*, 15-cv-1118 (N.D. Ga.), in which the district court entered a default judgment enjoining Evans from future violations of certain provisions of the federal securities laws.

As a result of Evans' failure to file an answer to the OIP or otherwise defend this proceeding, I found him in default and ordered the Division of Enforcement to file a motion for sanctions by January 15, 2016. *James A. Evans, Jr.*, Admin. Proc. Rulings Release No. 3434, 2015 SEC LEXIS 5301 (ALJ Dec. 28, 2015). I directed that the "motion shall provide legal authority and evidentiary support relating to the OIP's allegations and the Division's requested sanctions, in accordance with *Rapoport v. SEC*, 682 F.3d 98 (D.C. Cir. 2012), and *Ross Mandell*, Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7-9 (Mar. 7, 2014)." *Id.* After the Division did not file the motion by the January 15 due date, I scheduled a prehearing conference for February 3, 2016, at which Division counsel requested, and I granted, an extension of the deadline for the motion for sanctions to February 12, 2016. *James A. Evans, Jr.*, Admin. Proc. Rulings Release No. 3571, 2016 SEC LEXIS 382 (ALJ Feb. 3, 2016).

On February 12, the Division filed a motion for summary disposition and default judgment, with eleven exhibits in support (Exs. A-K). The Division requests that Evans "be permanently barred from participating in the securities industry in any manner whatsoever." Motion at 20. I must consider a minimum of six factors to determine whether this sanction serves the public interest: 1) the egregiousness of the respondent's actions; 2) the isolated or recurrent nature of the infraction; 3) the degree of scienter involved; 4) the sincerity of the respondent's assurances against future violations; 5) the respondent's recognition of the wrongful nature of his conduct; and 6) the likelihood that the respondent's occupation will present opportunities for future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir.

1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *22 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010). In *Ross Mandell*, the Commission directed that before imposing an industry-wide bar, an administrative law judge must "review each case on its own facts to make findings regarding the respondent's fitness to participate in the industry in the barred capacities," and that the law judge's decision "should be grounded in specific findings regarding the protective interests to be served by barring the respondent and the risk of future misconduct." 2014 SEC LEXIS 849, at *8 (internal quotation marks omitted). The current record – which consists of the OIP and exhibits filed in support of the Division's motion – does not allow me to adequately conduct the required public interest analysis.

As a result of Evans' default, I deem true the OIP's allegations. *See* 17 C.F.R. § 201.155(a). The OIP alleges that Evans – while acting as both an investment adviser and a person associated with an investment adviser – operated the website cashflowbot.com under the business name DollarMonster, through which he represented to investors that: DollarMonster was a financial advisor with more than 120 management teams and $38 million in assets under management; DollarMonster managed a hedge fund that purchased stocks on behalf of investors in the fund; DollarMonster's "private fund" had "opened to the public worldwide"; and investors would make "big profits." OIP at 1-2. The OIP also alleges that: Evans purported to provide advice related to securities through DollarMonster; at least one version of the DollarMonster website specifically misrepresented that the fund purchased stocks on behalf of investors; and Evans withdrew more than $30,000 of investor funds for personal use as compensation, roughly matching the disclosed fees of 2.5% of funds invested. *Id.* a 2. These allegations, by themselves, provide little detail about the egregiousness of Evans' misconduct, his level of scienter, the isolated or recurrent nature of any infractions, or the likelihood of future violations.[1]

The Division's motion consists largely of a recitation of facts from the complaint filed against Evans in the underlying civil action. The complaint alleged that: Evans violated the antifraud provisions of the federal securities laws by perpetrating a Ponzi scheme through the DollarMonster website, which collapsed and caused investor losses, and by making false misrepresentations in the course of this scheme; and Evans violated the registration provisions of the federal securities laws by illegally selling unregistered securities. Ex. H at 1-3, 6-10, 12-19. The complaint also alleged that after DollarMonster ceased operations, Evans continued to raise funds from investors through a new website. *Id.* at 10-11.

However, I have doubts about the appropriateness of relying on the complaint in the underlying civil action, which was resolved by default, to resolve this proceeding. As the Commission ruled in *Gary L. McDuff*, "the law judge . . . erred when he based his sanctions determination on the allegations in a civil complaint on which [the respondent] defaulted" as those allegations did not "have the necessary preclusive effect to make th[e]" required public interest determination. Exchange Act Release No. 74803, 2015 SEC LEXIS 1657, at *3 (Apr.

[1] The remaining OIP allegations relate to the underlying civil action and what the complaint in that action alleged. Although I deem true the fact that the civil complaint made certain allegations against Evans, the OIP did not adopt those allegations from the civil complaint as substantive facts but simply relayed what the civil complaint alleged.

23, 2015). Without providing additional guidance, the Commission opined that "[s]uch allegations may, in certain circumstances, provide a basis for assessing whether sanctions are appropriate . . . ." *Id.* at *11. But the Division fails to distinguish *McDuff* or explain why it is appropriate to assess sanctions against Evans based on the allegations in the civil complaint. Moreover, the district court made no independent findings upon which I could rely for the public interest analysis; rather, its default judgment simply adopted the complaint's allegations. *See* Ex. J (*SEC v. Evans*, No. 15-cv-1118 (N.D. Ga. Sept. 30, 2015), ECF No. 9); *cf. Don Warner Reinhard*, Exchange Act Release No. 61506, 2010 SEC LEXIS 1010, at *14 n.25 (Feb. 4, 2010) ("There could be cases . . . in which a district court receives evidence and makes findings following entry of a default judgment with relevance to our sanctions analysis.").

Even considering the remaining exhibits submitted in support of the Division's motion, the record still fails to provide an adequate basis to impose permanent industry bars. Several exhibits are simply screenshots of the DollarMonster website at various dates; standing alone, they do not demonstrate that the representations made on the website were false or that Evans perpetrated a Ponzi scheme. Exs. B-E. Another exhibit consists of monthly webhosting invoices billed to Evans and a complaint to the online WHOIS domain database alleging that the cashflowbot.com website is running a scam and should be taken offline. Ex. F. The Division's evidence also includes bank account statements and bank transfer authorizations, but these documents only show that Evans had access to DollarMonster's accounts and withdrew money. Ex. G. Likewise, email communications between DollarMonster and a single investor illustrate that the investor was not receiving the payouts or earnings she expected from her investments and her concerns about how funds were being invested. *See* Ex. A. For example, in an email dated September 13, 2012, this investor asserted that there was a "rumor" that "$600,000 [was] missing" and her belief that DollarMonster was "in over [its] head [but] . . . really not intending to swindle anyone." *Id.* The investor questioned why DollarMonster continued to take money from new investors. *Id.* Other emails from or to this same investor similarly raise red flags about DollarMonster, but they do not establish that Evans, through DollarMonster, was misrepresenting its operations or operating a Ponzi scheme.[2]

While it is true that Evans has not appeared in this action to make assurances against future violations or to show that he recognizes the wrongful nature of his conduct, those factors are not dispositive, particularly given the lack of evidence for the other public interest factors. In addition to deficiencies with the evidence itself, the Division's motion only cites to exhibits generally, without showing which particular exhibit supports any particular factual assertion. *See, e.g.*, Motion at 5-6 (setting forth assertions about the "Mechanics of the DollarMonster

[2] Based on my review of the submitted exhibits, certain representations to this investor and that appeared on the DollarMonster website are indeed suspect. *See, e.g.*, Ex. A at 1 (the "DollarMonster Team" emailed an investor that "[a]fter [the] two days has passed, your investment is doubled to $183.00"); Ex. C at 9 (from the website: "Daily Profit for 11/11/2013 is 1.1%"); Ex. E at 1 (from the website: "If you purchase a position for $10.00, then your position will pay out $20.00 directly to your SolidTrustPay account"). The Division, however, does not provide supporting evidence or argument as to why representations made to this investor, or that appeared on the website, were false.

Scheme" with a general reference "See Exhibits A through G"). The better approach would be to support each sentence relating to a factual assertion with a specific record citation.

Because I do not at this time have sufficient evidence to evaluate all of the public interest factors, resolution of this proceeding may require a hearing. For these reasons, I DENY the Division's motion without prejudice. I ORDER that a telephonic prehearing conference will be held on March 22, 2016, at 11:00 a.m. EDT, at which the logistics of further proceedings will be discussed.

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Cameron Elliot
Administrative Law Judge