

laws while associated with an investment adviser and a broker-dealer. However, it stated that the ID failed to articulate the need for assessment of sanctions in the public interest in light of the so-called Steadman² factors, in view of the fact that the injunction was entered by default with no litigated or agreed upon findings of fact.

On March 22, 2010, a prehearing conference was held. Among the topics discussed was the fact that additional material, Reinhard's conviction in United States v. Reinhard, No. 4:08-CR-49-RH-WCS (N.D. Fla. Oct. 5, 2009), of which official notice could be taken pursuant to 17 C.F.R. § 201.323 in rendering a decision in this proceeding, had appeared since the date of the ID. Reinhard was given the opportunity to state, by May 6, 2010, why his conviction should not be considered in evaluating whether sanctions should be imposed in the public interest in light of the Steadman factors. This was memorialized in an Order to Show Cause. Don Warner Reinhard, Admin. Proc. No. 3-13280 (A.L.J. Mar. 23, 2010) (unpublished). At the prehearing conference, Reinhard opined that the conviction was not relevant to this proceeding, but the Commission never received from him a pleading or any correspondence to this effect.

The Supplemental ID evaluated legal precedent and concluded that Reinhard's conviction in United States v. Reinhard, on several counts involving dishonesty, was based on facts that are relevant to the Steadman factors. Official notice, pursuant to 17 C.F.R. § 201.323, was taken of the October 5, 2009, judgment in United States v. Reinhard, and of the May 13, 2009, Plea Agreement and Factual Basis for Plea to which Reinhard agreed in his plea of guilty to violations of 18 U.S.C. § 1014 (Making False Statements on Loan Application), 18 U.S.C. §§ 152(3) and 2 (Making False Statements to Bankruptcy Trustee, Aiding and Abetting), 18 U.S.C. §§ 1001 and 2 (Making False Statements, Aiding and Abetting), 18 U.S.C. § 152(7) (Transferring and Concealing Assets from the Bankruptcy Trustee) (two counts), 26 U.S.C. § 7206(1) (Making False Statements on Income Tax Return), and 26 U.S.C. § 7206(2) (Procuring False Statements on Income Tax Return). The Factual Basis for Plea describes Reinhard's conduct that violated each of the above provisions. The Supplemental ID found facts as stated in the Factual Basis for Plea, for example, that the amount of intended loss involved in the bank, bankruptcy, and tax fraud was approximately \$995,874.

MOTION TO CORRECT

The Motion to Correct states that Reinhard did respond to the March 23, 2010, Order to Show Cause and encloses a copy of a document entitled Response to Order to Show Cause (OSC Response) that he says he sent on May 6, 2010. The OSC Response argues that the conviction should not be considered in this proceeding as being "completely irrelevant" to the issues in this proceeding. Further, the Motion to Correct and the OSC Response challenge various facts stated in the Factual Basis for Plea on which the Supplemental ID relied. For example, the Motion to Correct argues that the amount of intended loss was \$357,400, not \$995,874. Finally, the documents refer to Reinhard's pending appeal of his sentence.

² See Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979).

Pursuant to 17 C.F.R. § 201.111(h), “[a]ny motion to correct must be filed within ten days of the initial decision.” Reinhard’s Motion to Correct was filed twenty days after the initial decision and is thus untimely. Reinhard states that he received the Supplemental ID, sent to him by certified mail, on June 11, 2010. However, 17 C.F.R. § 201.111(h) does not make an allowance for such a delay.

Additionally, pursuant to 17 C.F.R. § 201.111(h), “[a] motion to correct is properly filed . . . only if the basis for the motion is a patent misstatement of fact in the initial decision.” However, Reinhard’s Motion to Correct does not identify a patent misstatement of fact in the Supplemental ID. Facts, such as the amount of intended loss, that Reinhard now states are errors were agreed to by him in his May 13, 2009, Plea Agreement and Factual Basis for Plea. In any event, Reinhard is foreclosed from arguing that the facts concerning his involvement in the criminal wrongdoing are not proven. It is well established that the Commission does not permit criminal convictions to be collaterally attacked in its administrative proceedings. See Ira William Scott, 53 S.E.C. 862, 866 (1998); William F. Lincoln, 53 S.E.C. 452, 455-56 (1998).³ Finally, Reinhard’s argument, made in the OSC Response as well as at the March 22, 2010, prehearing conference, that his conviction in United States v. Reinhard is irrelevant to his proceeding, was thoroughly addressed in the Supplemental ID. Accordingly, the Motion to Correct must be dismissed.

IT IS SO ORDERED.

Carol Fox Foelak
Administrative Law Judge

³ Reinhard is appealing his sentence, not his conviction, but even if he were appealing his conviction, the pendency of an appeal does not preclude the Commission from action based on a conviction. See Joseph P. Galluzi, 55 S.E.C. 1110, 1116 n.21 (2002).