

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Release No. 4631 / January 30, 2017

Admin. Proc. File No. 3-16946

In the Matter of
GEORGE CHARLES CODY PRICE

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Injunction

Owner and manager of unregistered investment adviser was permanently enjoined from violating antifraud provisions of the federal securities laws. *Held*, it is in the public interest to bar him from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent or nationally recognized statistical rating organization.

APPEARANCES:

John E. Dolkart, Jr., for George Charles Cody Price.

Lynn M. Dean and *John B. Bulgozdy*, for the Division of Enforcement.

Appeal filed: June 30, 2016
Last brief received: October 7, 2016

George Charles Cody Price, sole owner and officer of an unregistered investment adviser, ABS Manager, LLC, appeals from the initial decision of an administrative law judge barring Price from the securities industry after he consented to be permanently enjoined from violating the antifraud provisions of the federal securities laws.¹ We find that Price's injunction satisfies the statutory requirements for imposing an industry bar and that such a bar is in the public interest.

I. Facts

On February 8, 2013, the Commission filed a complaint (the "Complaint") seeking an injunction in the United States District Court for the Southern District of California to halt an ongoing fraudulent scheme by Price and ABS Manager. On April 30, 2015, Price consented, without admitting or denying the Complaint's allegations, to be enjoined from violating the antifraud provisions of Section 17(a) of the Securities Act of 1933; Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder; and Section 206 of the Investment Advisers Act of 1940, and Rule 206(4)-8 thereunder. He also agreed to pay a civil penalty of \$150,000 and disgorgement (jointly and severally with ABS Manager) of \$339,900 plus prejudgment interest. Price agreed not to contest the Complaint's factual allegations in any related Commission disciplinary proceeding. We summarize the Complaint's allegations below.

From 2009 to February 2013, Price raised approximately \$18.8 million for three investment funds (the "Funds") through ABS Manager, which he solely owned, operated, and controlled. Although Price told prospective investors that the Funds were invested in "very safe" and "very secure" "government bonds," in reality the Funds were invested in particularly risky tranches of collateralized mortgage obligations. Price also misrepresented the Funds' performance to investors in private placement memoranda, radio spots, websites, newsletters, and monthly account statements. He claimed that the Funds were earning "extraordinary" double-digit annualized returns of 12.5% to 18%, during a period when the Funds' total returns were negative 2% and annual returns never exceeded 3%. Similarly, Price misled investors by falsely overstating the value of the Fund's assets and by falsely claiming that he had worked at Goldman Sachs and as a trader at Wells Fargo specializing in mortgage pool trading markets. Price also improperly enriched himself and his relatives by withdrawing unearned fees from the Funds each month, ultimately misappropriating almost \$600,000.

The Complaint specifies that Price knew, or was reckless in not knowing, that his representations about the safety of the Funds, the Funds' double-digit returns, and his own work experience were false and misleading. He also knew, or was reckless in not knowing, that payments he made to himself and his relatives from the Funds were improper and therefore misappropriated. Accordingly, Price acted with scienter.²

¹ *George Charles Cody Price*, Initial Decision Release No. 1018, 2016 WL 3124675 (June 3, 2016).

² *See Dolphin & Bradbury, Inc. v. SEC*, 512 F.3d 634, 639 (D.C. Cir. 2008) (holding that scienter may be shown by recklessness where "a danger [of deceiving investors] is either known to [the person] or is so obvious that [the person] must have been aware of it") (quoting *SEC v. Steadman*, 967 F.2d 636, 641-42 (D.C. Cir. 1992)) (emphasis omitted).

II. Procedural History

After Price consented to the injunction, we instituted this proceeding on November 5, 2015, under Section 203(f) of the Advisers Act.³ On June 3, 2016, the administrative law judge granted a motion for summary disposition filed by the Division of Enforcement (the “Division”) and barred Price from the securities industry. The law judge found that Price’s misconduct was egregious and that, because he “still shows no remorse or understanding that such misconduct was violative,” there was a substantial possibility of future violations.⁴ Price appeals that decision.

III. Analysis

Advisers Act Section 203(f) authorizes us to impose an industry bar if (1) a person has been, among other things, enjoined from any conduct or practice in connection with the purchase or sale of a security; (2) at the time of the alleged misconduct, the person was associated with an investment adviser; and (3) a bar is in the public interest.⁵ We find that these factors are satisfied.

A. Price was enjoined from conduct in connection with the purchase or sale of a security and was associated with an investment adviser at the time of his misconduct.

Price does not dispute that he has been enjoined from conduct in connection with the purchase or sale of securities. Nor does he dispute that he was associated with an investment adviser at the time of his misconduct. The Advisers Act defines an “investment adviser” as “any person who, for compensation, engages in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities”⁶ Here, ABS Manager managed the Funds and their investments, was to be compensated based on the Funds’ returns, and applied to be a registered investment adviser in California (an application that was pending at the time of the Complaint). ABS Manager thus met the definition of an investment adviser notwithstanding its failure to register. The Advisers Act further defines a “person associated with an investment adviser” as any “partner, officer, or director of such investment adviser (or any person performing similar functions), or any person directly or

³ 15 U.S.C. § 80b-3(f).

⁴ The law judge also declined to grant Price a waiver from Securities Act “bad actor” rules to allow him to participate in certain future securities offerings. But we instituted this proceeding to determine whether to impose remedial sanctions under Section 203(f) of the Advisers Act—not to determine whether to grant waivers from bad actor rules under the Securities Act. Waiver applications may be submitted to the Division of Corporation Finance. *See Statement on Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D*, <https://www.sec.gov/divisions/corpfin/guidance/disqualification-waivers.shtml> (Mar. 13, 2015) (last visited Jan. 13, 2017); *see also Disqualification of Felons and Other “Bad Actors” from Rule 506 Offerings*, Securities Act Release No. 9414, 2013 WL 3817311, at *18 (July 10, 2013) (explaining the decision not to impose adjudication requirements on the waiver process).

⁵ 15 U.S.C. § 80b-3(f).

⁶ *Id.* § 80b-2(a)(11).

indirectly controlling or controlled by such investment adviser”⁷ Because Price controlled ABS Manager, he was a person associated with an investment adviser.⁸

B. A bar from the securities industry is in the public interest.

In assessing whether remedial sanctions are in the public interest in a proceeding under Section 203(f), we consider, among other things: 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.⁹ These factors weigh in favor of an industry-wide bar here.

Price’s conduct was egregious, recurrent, and done with scienter. The Commission has long held that fraudulent conduct threatens the integrity of the securities markets and is therefore subject to the severest of sanctions under the securities laws.¹⁰ In fact, “ordinarily, and in the absence of evidence to the contrary,” a bar from the securities industry will be in the public interest when a respondent has been enjoined from violating antifraud provisions.¹¹ In three offerings, over several years, through numerous oral and written communications, Price misled investors about the Funds’ safety and assets, their returns, and his own industry experience. Price perpetuated this fraud by sending Fund investors monthly statements and other communications that overstated the Funds’ actual returns. And Price misappropriated hundreds of thousands of dollars from the Funds over the course of his fraud.

Price also offers no assurances on appeal that he will not engage in future violations, and he has not recognized the wrongfulness of his conduct. To the contrary, Price has continued to dispute the wrongfulness of his misconduct in this proceeding. The Complaint alleges that Price was solely responsible for repeatedly misleading investors about such vital information as the Funds’ performance and safety and for misappropriating Fund assets. In his opposition to the Division’s motion for summary disposition, Price disputed that he was “in any way involved with the principal acts of fraud and deceit as alleged by the Division.” And in his petition for review, Price describes his misrepresentations as “technical.” But “where, as here, respondents consent to an injunction, they may not dispute the factual allegations of the injunction complaint in a

⁷ *Id.* § 80b-2(a)(17).

⁸ *See, e.g., Kornman v. SEC*, 592 F.3d 173, 184 (D.C. Cir. 2010) (finding that a portfolio manager for two hedge funds was associated with an unregistered investment adviser).

⁹ *Robert L. Burns*, Advisers Act Release No. 3260, 2011 WL 3407859, at *8 (Aug. 5, 2011) (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff’d on other grounds*, 450 U.S. 91 (1981)).

¹⁰ *See, e.g., Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *6 (Dec. 12, 2013), *petition denied*, 773 F.3d 89 (D.C. Cir. 2014); *Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 WL 1377357, at *5 (Apr. 20, 2012).

¹¹ *Justin F. Ficken*, Exchange Act Release No. 58802, 2008 WL 4610345, at *3 (Oct. 17, 2008) (finding a bar to be in the public interest for former associated person who was permanently enjoined from violating antifraud provisions of the federal securities laws).

subsequent administrative proceeding.”¹² Having failed to recognize the wrongful nature of this misconduct, he cannot claim mitigation on this basis.

We are also concerned that Price’s occupation will present opportunities for future violations. “The securities industry presents continual opportunities for dishonesty and abuse, and depends heavily on the integrity of its participants and on investors’ confidence.”¹³ Price does not indicate that he plans to leave the industry, where he would present an ongoing risk to investors and the marketplace without the imposition of an industry bar.¹⁴

C. The need for a bar outweighs any mitigating circumstances.

Price claims that, by relying on the Complaint, “the Commission has effectively denied [him] the ability to present any cognizable legal defense in this proceeding” and is not considering “a complete record of evidence.” But while the Commission must consider mitigating evidence that a respondent proffers about the circumstances surrounding his misconduct, it is well settled that the Commission is “entitled to rely on the allegations of [a] complaint” that is followed by a consent judgment without “relitigat[ing] those factual” issues.¹⁵ And in his consent Price expressly agreed not to contest the factual allegations from the injunctive action.¹⁶

In any event, the only additional evidence that Price mentions is from a FINRA arbitration concerning the liquidation of certain ABS Manager accounts. Price claims that this arbitration would “conclusively determine the loss to [his] investors—a critical factor in the determination of the appropriate penalties.” But even if Price’s investors eventually recouped their investments (or even made a profit), that would not mitigate the egregiousness of Price’s conduct.¹⁷ By

¹² *Siris*, 2013 WL 6528874, at *8 (internal quotation marks, citation, and alteration omitted).

¹³ *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *7 (Sept. 26, 2007), *petition denied*, 548 F.3d 129 (D.C. Cir. 2008).

¹⁴ The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010), expanded the categories of associational bars authorized by Advisers Act Section 203(f) and allowed the Commission to impose a broad collateral bar on participation throughout the securities industry. We find that Price’s violative conduct between Dodd-Frank’s effective date in 2010 and the end of his scheme in 2013 amply supports an industry-wide bar.

¹⁵ *Siris*, 773 F.3d at 95 (citation omitted).

¹⁶ *See, e.g., id.* at 96 (“Whether or not issues established in the consent judgment were ‘actually litigated’ for purposes of estoppel, the Commission’s application of factual preclusion in the follow-on proceeding was appropriate because the judgment unambiguously barred *Siris* from making any future challenge to the allegations in the complaint.”).

¹⁷ Price suggested in his petition for review that “the current proceeding should be stayed until such time as [the FINRA arbitration] evidence can be presented to the Commission” and requested “leave . . . to file a supplemental brief containing such evidence when it becomes available, in or about September 2016.” After the Commission set a briefing schedule and Price moved for an extension of time, the Commission ordered that Price file a brief in support of his petition for review by September 7, 2016, and any reply brief by October 21, 2016. *George Charles Cody Price*, Advisers Act Release No. 4520, 2016 WL 4582403, at *1 (Sept. 2, 2016).

(continued...)

misappropriating assets and repeatedly misstating the Funds' safety and performance, Price demonstrated his unfitness to participate in the securities industry by willingly exposing investors "to risks of which they were never aware and to which they had not agreed beforehand."¹⁸

We also do not find mitigating Price's claim that he "cooperated extensively" in this proceeding and the underlying civil case. Price proffers no evidence of this cooperation and does not describe it in his appeal. Regardless, any mitigating effect of any such purported cooperation would be outweighed by the egregious and recurrent nature of Price's fraud.¹⁹

Nor do we agree with Price's argument that the law judge created an "appearance of bias" by allegedly using "unnecessary and inflammatory dicta" when determining sanctions. Price's claim relies solely on the law judge's statement that, "by welshing on his promise not to contest the civil complaint's allegations, Price undercuts the credibility of his assurances against future violations."²⁰ Price asserts that this language was "racially offensive" because Price "happens to be of Welsh heritage" and that this language, along with the rest of the law judge's public interest analysis, "should be stricken from the record in a redacted and revised decision." We recognize that Price may have taken offense at the use of the word "welshing," but find no evidence that the law judge's behavior, "in the context of the whole case, was 'so extreme as to display clear inability to render fair judgment.'"²¹ Price points to no evidence, for example, that the law judge

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But Price filed neither an opening nor a reply brief, and he has not moved the Commission to adduce additional evidence. *See* Rule of Practice 452, 17 C.F.R. § 201.452 (describing standards for submitting additional evidence into the record). On October 7, 2016, the Division moved to dismiss Price's petition as abandoned, and Price has not responded to that motion. Nonetheless, in the exercise of our discretion we have considered on the merits the arguments Price makes in his other filings on appeal. We therefore deny Price's and the Division's motions as moot.

¹⁸ *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at *4 (Feb. 4, 2008) (finding that a bar was in the public interest), *petition denied*, 561 F.3d 548 (6th Cir. 2009); *see also James C. Dawson*, Advisers Act Release No. 3057, 2010 WL 2886183, at *3 (July 23, 2010) ("[O]ur finding that Dawson's conduct was egregious is based on the nature of the violation itself, not solely on any calculation of financial harm to his clients."); *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *9 (Feb. 13, 2009) ("Although the district court stated in sentencing Kornman that no particular investor was directly harmed by Kornman's conduct, our focus is on the welfare of investors generally and the threat one poses to investors and the markets in the future."), *petition denied*, 592 F.3d 173 (D.C. Cir. 2010).

¹⁹ *See, e.g., Toby G. Scammell*, Advisers Act Release No. 3961, 2014 WL 5493265, at *8 (Oct. 29, 2014) (finding that respondent's cooperation with Division's investigation and settlement did not outweigh the factors supporting an industry bar); *Gibson*, 2008 WL 294717, at *4 (finding cooperation and settlement not mitigating because the repeated fraudulent conduct over an extended period suggested a grave threat to investors).

²⁰ *Price*, 2016 WL 3124675, at *7.

²¹ *Rollins v. Massanari*, 261 F.3d 853, 858 (9th Cir. 2001) (quoting *Liteky v. United States*, 510 U.S. 540, 551 (1994)).

was influenced by, or even knew about, Price's heritage. And the law judge's rulings otherwise indicate deliberation and fairness, including her decision to grant, over the Division's objection, his request for leave to file a surreply to the Division's motion for summary disposition. In any event, the initial decision "ceased to have any force or effect" once Price filed his petition for review with the Commission,²² and our de novo review cures any bias that may have existed.²³

Based on our review, we conclude that it is in the public interest to impose an industry bar.²⁴ "Fidelity to the public interest" requires a severe sanction for fraud because the securities industry relies on all securities professionals to avoid dishonest and self-interested misconduct.²⁵ Price failed to satisfy these basic obligations of a securities professional. Instead, he operated a multi-million-dollar fraudulent scheme over several years. Price's continued association in the industry would pose an unacceptable risk to the public that necessitates a bar.²⁶

An appropriate order will issue.²⁷

By the Commission (Acting Chairman PIWOWAR and Commissioner STEIN).

Brent J. Fields
Secretary

²² *E.g.*, *Wendy McNeeley*, Exchange Act Release No. 68431, 2012 WL 6457291, at *13 n.32 (Dec. 13, 2012); Rule of Practice 360(d)(1), 17 C.F.R. § 201.360(d)(1).

²³ *See, e.g.*, *Guy P. Riordan*, Exchange Act Release No. 61153, 2009 WL 4731397, at *17 (Dec. 11, 2009) ("Our de novo review cures whatever bias, if any, [that] may have existed."), *petition denied*, 627 F.3d 1230 (D.C. Cir. 2010).

²⁴ The Division filed a motion for summary affirmance on July 21, 2016, and renewed that motion on October 7, 2016. We deny those motions as moot.

²⁵ *Siris*, 2013 WL 6528874, at *11 n.71 (internal citations and punctuation omitted).

²⁶ *See, e.g.*, *Gibson*, 2008 WL 294717, at *5 (finding that respondent's "willingness to exploit his position as an investment adviser—which placed him in a fiduciary relationship with his advisory clients—underscores his lack of integrity and unfitness to remain in the securities industry").

²⁷ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4631 / January 30, 2017

Admin. Proc. File No. 3-16946

In the Matter of
GEORGE CHARLES CODY PRICE

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day, it is

ORDERED that George Charles Cody Price be barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent or nationally recognized statistical rating organization.

By the Commission.

Brent J. Fields
Secretary