

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
v.)	Civil No. 18-11996-PBS
)	
EDWARD WITHROW,)	
Defendant)	
_____)	

ORDER

March 12, 2019

The Securities and Exchange Commission seeks an Order barring defendant from participating in any offering of penny stock pursuant to Section 20(g) of the Securities Act [15 U.S.C. § 77t(g)] and Section 21(d) of the Exchange Act [15 U.S. C. § 78u(d)], and barring him from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S. C. § 781], or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S. C. § 78o(d)], pursuant to Section 20(e) of the Securities Act [15 U.S. C. § 77t(e)], and Section 21(d)(2) of the Exchange Act [15 U.S. C. § 78u(d)(2)]. (Dkt. No. 11)

After a review of the submissions and consideration of the evidence at trial, the Court has determined that a permanent injunction is unwarranted. The Court has considered the factors

set forth in the applicable caselaw. See Rizek v. SEC, 215 F.3d 157, 162 (1st Cir. 2000) (considering the egregiousness of defendant's conduct, the evidence of scienter and subsequent remorse, and the likelihood of future violations to determine whether to uphold administrative order permanently barring defendant from securities industry); SEC v. Weed, 315 F. Supp. 3d 667, 677 (D. Mass. 2018) (considering six factors identified in SEC v. Patel, 61 F. 3d 137, 141 (2d Cir. 1995), to determine whether to enter permanent penny-stock injunction against defendant).

Based on these factors, the Court prohibits defendant from serving as an officer or agent pursuant to 15 U.S.C. § 77t(e), and from participating in the offering of penny stock pursuant to 15 U.S.C. § 77t(g) for a five-year term. On the one hand, Mr. Withrow is not a repeat offender and is remorseful. He was a legitimate businessman prior to his involvement in the at-issue scheme, and there is little likelihood of recidivism. Moreover, Mr. Withrow pled guilty only to making false statements to the SEC, and the jury was hung on the more serious security fraud charges. On the other hand, the Government proved by a preponderance of the evidence at trial that Mr. Withrow knowingly participated in a pump-and-dump scheme while serving as chairman of the Endeavor's Board of Directors. See Herman & MacLean v. Huddleston, 459 U.S. 375, 390 (1983) (establishing

preponderance standard for civil claims under the federal securities laws). Accordingly, the Court holds that a five-year bar is appropriate.

/s/ Patti B. Saris
Honorable Patti B. Saris
Chief Judge