INITIAL DECISION RELEASE NO. 575
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15443

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

In the Matter of	:	INITIAL DECISION ON DEFAULT
	:	March 14, 2014
ALAN SMITH	:	

APPEARANCES: Duane Thompson and Donna Norman, Division of Enforcement, Securities and Exchange Commission

Alan Smith, pro se

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

The Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings (OIP) on August 27, 2013, alleging that on June 27, 2013, Alan Smith (Smith) was enjoined from violating Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Exchange Act Rule 10b-5, and from aiding and abetting future violations of Section 15(a) of the Exchange Act, in SEC v. Secure Capital Funding Corp., No. 3:11-cv-916 (D.N.J.) (Secure Capital Funding). The OIP directs an Initial Decision no later than 210 days from the date the OIP is served on Smith. OIP at 3.

The Commission encountered problems serving Smith with the OIP. I granted the Division of Enforcement's (Division) request to serve Smith by publication in the Republic of Latvia (Latvia). Alan Smith, Admin. Proc. Rulings Release No. 1056, 2013 SEC LEXIS 3648 (Nov. 20, 2013). On January 7, 2014, the Division filed the Declaration of Donna K. Norman, which states that notice of the institution of this proceeding against Smith was published in the weekend edition of The International New York Times on December 7, 14, and 21, 2013. On January 14, 2014, the Division forwarded to this Office an email attaching a multi-page letter from Smith a/k/a Harry Draudins at Ganiba Dambus 15-13a, Riga, Latvia, dated January 7, 2014, which stated that it is Smith's Answer, motion for a more definite statement, and memorandum in support.

I denied Smith's motion for a more definite statement and stated that he would be in default if he did not appear at the telephonic prehearing conference on January 21, 2014, and

defend the proceeding. Alan Smith, Admin. Proc. Rulings Release No. 1172, 2014 SEC LEXIS 147 (Jan. 15, 2014); see 17 C.F.R. §§ 201.155(a), .221(f).

At the January 23, 2014, telephonic prehearing conference, I ruled that Smith had been served with the OIP on December 21, 2013.[1] Tr. 3. The Division participated in the prehearing conference along with another person who identified himself first as Smith and later as Draudins. Tr. 5. However, during the entire prehearing conference it was almost impossible to understand what the person was saying. The Division thought possibly the person was using some type of voice altering equipment. Tr. 9. The ten-page transcript is an effort to make sense of several minutes of garbled utterances, where it appeared a person was speaking in a foreign language and then in a different voice making an unresponsive comment in English, and periods of silence. Smith indicated he wanted a hearing, but he was not sure he would attend. Tr. 6. He seemed to deny that he was the person who was enjoined in Secure Capital Funding. Tr. 6. At the conclusion of the prehearing conference, the Division requested that Smith be held in default. Tr. 9.

Findings and Conclusions

Smith is in default for not participating in the prehearing conference and for not otherwise defending the proceeding. See 17 C.F.R. §§ 201.155(a), .221(f). Accordingly, pursuant to Rule 155(a) of the Commission's Rules of Practice, I find the allegations in the OIP to be true. See 17 C.F.R. § 201.155(a). I take official notice, pursuant to Rule 323 of the Commission's Rules of Practice, of the docket, judgment, pleadings, and orders in Secure Capital Funding, including the District Court's June 27, 2013, Order, referenced in the OIP, which granted the Commission's Motion for Entry of a Default Judgment against Smith and enjoined him from violations of the federal securities laws. See 17 C.F.R. § 201.323; Order, Secure Capital Funding, Electronic Case Files (ECF) No. 95 (filed June 28, 2013).

Exchange Act Section 15(b)(6) authorizes the Commission, where it is in the public interest, to take certain actions where a person has been enjoined from engaging in or continuing any conduct or practice in connection with acting as a broker or dealer or in connection with the purchase or sale of any security. 15 U.S.C. § 78*o*(b)(4)(C), (6)(A)(iii). As discussed in greater detail below, this requirement is satisfied because Smith was enjoined in Secure Capital Funding from conduct covered by the statute. Section 15(b)(6) also requires that at the time of the misconduct, the person was associated or seeking to become associated with a broker or dealer. This requirement is satisfied because Smith was associated with an unregistered broker-dealer from at least the third quarter of 2010 through July 15, 2011. OIP at 1; see Vladislav Steven Zubkis, 58 S.E.C. 1014, 1025 (2005) ("It is well established, however, that Exchange Act Section 15(b) . . . applies to natural persons who are, like Zubkis, acting as a broker or dealer or associated with a broker or dealer . . . .").

Pursuant to Section 15(b)(6) of the Exchange Act, the Commission can censure, place limitations on the activities or functions, suspend for a period not exceeding twelve months, or bar a person from association with a broker, dealer, investment adviser, municipal securities

[1] Due to inclement weather, the Commission's headquarters in Washington, D.C., was closed on January 21, 2014, and the prehearing conference was instead held on January 23, 2014.

dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock. The generally accepted criteria for making a public interest determination are:

> [T]he egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant'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 Donald T. Sheldon, 51 S.E.C. 59, 86 (1992), aff'd, 45 F.3d 1515 (11th Cir. 1995); Joseph J. Barbato, Securities Act Release No. 7638 (Feb. 10, 1999), 69 SEC Docket 178, 200 n.31.

On March 7, 2014, the Commission declined to summarily affirm an Administrative Law Judge's imposition of the industry-wide bars allowed by the Dodd-Frank Wall Street Reform and Consumer Protection Act amendments to Exchange Act Section 15(b)(6) where it determined that it was necessary to articulate with specificity why the facts and circumstances of the particular case warranted the industry-wide bars. Ross Mandell, Exchange Act Release No. 71668, 2014 WL 907416. The Commission directed that in ordering an industry-wide bar the Administrative Law Judge's analysis should be grounded in "specific findings regarding the protective interests to be served by barring the respondent and the risk of future misconduct." Id. at *2 (internal quotations omitted).

I find that the public interest is served by barring Smith from any association in the securities industry to the broadest degree allowed for the following reasons.

Smith's Illegal Conduct Involved Unregistered Securities and Fraud

From at least the third quarter of 2010 through July 15, 2011, Smith was associated with unregistered broker-dealers Secure Trust and ST Underwriters Corporation (ST Underwriters). OIP at 1. During this period, Smith sold unregistered securities, misappropriated investor funds, falsely represented to investors that their funds were invested in Swiss debentures with no risk to investors' principal, and otherwise engaged in a variety of conduct that operated as a fraud and deceit on investors. Id. at 2.

The amended complaint in Secure Capital Funding named Smith as a defendant and alleged that he controlled Secure Trust and ST Underwriters and that he masterminded the prime bank fraud that was the central issue in the case. First Am. Compl., Secure Capital Funding, ECF No. 29, at 2-4 (filed July 15, 2011). The District Court clerk entered a default against Smith on November 9, 2011. On October 19, 2012, Harry Draudins (Draudins) filed a motion to intervene in the District Court proceeding, stating that he was the rightful owner of the funds and securities in the Secure Capital Funding Corporation securities account and attaching a document

that stated Draudins was also "sometimes known as H. Draudins or Alan Smith."[2] Mot. of Interpleading as a Matter of Right, Secure Capital Funding, ECF No. 68, at 2-3. On February 21, 2013, the magistrate judge denied the motion to intervene and stated he believed "significant issues regarding Draudins' identity and interest in this matter persist," and noted that Draudins alerted the court that he would not be able to attend oral argument on the motion to intervene, only four days before it was scheduled to take place, due to his health and inability to retain counsel and that he failed to participate in a telephone conference. Order, Secure Capital Funding, ECF No. 84.

The District Court granted the Commission's Motion for Entry of Default Judgment against Smith on June 27, 2013, and permanently enjoined Smith from violations of Sections 5(a), 5(c), and 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5, and from aiding and abetting violations of Section 15(a) of the Exchange Act.[3] Order, Secure Capital Funding, ECF No. 95 (filed June 28, 2013).

The District Court found that Smith and others falsely represented they had access to investment opportunities that would yield risk-free monthly returns of 10% to 100% and that investors' initial investments would be used to purchase debentures or held in non-depleting accounts to secure leveraged trading in securities.[4] Opinion, Secure Capital Funding, ECF No. 94, at 3 (filed June 28, 2013). The debentures and leveraged accounts were fictitious and despite gathering over $4 million from investors between September 2010 and February 2011, no investors have been able to make trades in their supposed accounts or have been refunded. Id. at 4. Smith directly communicated with at least two investors in furtherance of the fraudulent scheme. Id. Smith and ST Underwriters Corporation held themselves out as providing brokerage services despite failing to register as such. Id.

On March 10, 2014, the District Court issued an Opinion supplementing its June 27, 2013, Opinion and Order. In the March 10, 2014, Opinion the District Court found, based on evidence adduced at an evidentiary hearing, that Smith's ill-gotten gains were at least $3.4 million and that approximately $2.95 million he received from investors was routed through a bank account in New Jersey and then wired to an account in Latvia. Opinion, Secure Capital Funding, ECF No. 111, at 3-4. The District Court found that $2.84 million wired to Latvia on Smith's instructions represented the proceeds of fraud perpetrated substantially in the United

[2] The OIP refers to Smith a/k/a "H. Draudins." OIP at 1.

[3] The District Court's June 27, 2013, Order was amended on August 29, 2013, to correct a clerical mistake and clarify that Smith was enjoined from violating Section 17(a) of the Securities Act instead of Section 14(a). Order Correcting Clerical Mistake, Secure Capital Funding, ECF No. 100.

[4] In making its factual findings, the District Court accepted as true any facts contained in the pleadings regarding liability. Opinion, Secure Capital Funding, ECF No. 94, at 3 (filed June 28, 2013).

States. Id. at 4. The District Court found Smith liable for disgorgement of $3.4 million,[5] prejudgment interest of $319,481.76, and a $3.4 million civil penalty. Order, Secure Capital Funding, ECF No. 112, at 1-2.

An Industry-Wide Bar from Participation in the Securities Industry and from Participating in an Offering of Penny Stock is Necessary and Appropriate to Protect the Public.

By any reasonable standard, such behavior is egregious and it was accomplished not by a single act but by a myriad of transactions. Smith controlled ST Underwriters Corporation, and controlled and directed an individual and Secured Capital Funding Corporation and determined the fees and/or commissions paid for their services. Opinion, Secure Capital Funding, ECF No. 94, at 4 (filed June 28, 2013).

As noted by the District Court, Smith's failure to appear, which caused a delay in adjudicating the Commission's claims, increases the potential for continuing fraud and continuing cost to the victims. Id. at 8. When the District Court entered its Order on June 27, 2013, the case against Smith had been pending for approximately two years. Id. In this administrative proceeding, Smith continued his dilatory and obfuscating tactics by not accepting service of the OIP. As a result, the Division was forced to publish notice of this proceeding in the International New York Times. Finally, almost five months after the OIP was issued, Smith did not participate in any meaningful way in the proceeding, in particular the prehearing conference.

Degree of Scienter

The District Court agreed with the Commission's position that Smith and others had "acted with a high degree of scienter and committed multiple, systematic, and egregious violations of the securities laws." Id. at 13. In its March 10, 2014, Opinion, the District Court ordered Smith to pay $319,481.76 in prejudgment interest, stating that proof of a defendant's scienter justifies the award of prejudgment interest, and found that a civil penalty of $3.4 million was appropriate where:

> Smith masterminded a significant fraud with a high degree of scienter, causing substantial loss to investors. Moreover, Smith has neither acknowledged his wrongdoing nor cooperated with Plaintiff or the Court.

Opinion, Secure Capital Funding, ECF No. 111, at 7.

Recognition of Wrongful Conduct

Smith did not admit to any wrongdoing or provide any assurance that illegal activity would not continue either to the District Court or in this administrative proceeding. Id.

[5] $104,560 of this amount was ordered to be offset by funds deposited in a frozen U.S. bank account. Opinion, Secure Capital Funding, ECF No. 111, at 5.

Moreover, he did not even appear before the District Court or in this administrative proceeding to respond to the allegations of illegal conduct. As noted, Smith did not participate in the telephonic conference in any meaningful way and his Answer denying that a legal, enforceable, or proper judgment had been entered against him was submitted by Alan Smith a/k/a Harry Draudins—a farce that Smith has continued since the District Court action.

Likelihood of Opportunities for Future Wrongdoing

The District Court was troubled by the Commission's evidence that Smith "has already attempted to further defraud his victims by sending phony arbitration demands and instructions to forward moneys for its payment." Opinion, Secure Capital Funding, ECF No. 94, at 13 (filed June 28, 2013). Smith has demonstrated "an attitude toward regulatory oversight that is fundamentally incompatible with [basic] principles of investor protection and with association in any capacity covered by the collateral bar." John W. Lawton, Investment Advisers Act of 1940 Release No. 3513, 2012 WL 6208750, at *12 (Dec. 13, 2012).

Smith's egregious fraudulent conduct and obfuscating tactics demonstrate his unfitness for associations across the securities industry. As the Commission has explained, "[b]rokers, dealers, municipal securities dealers, and transfer agents routinely gain access to sensitive financial and investment information of investors and other market participants, and persons associated with municipal advisors and NRSROs routinely learn confidential and potentially market-moving information . . . . [and] [i]n order to gain access to such information, securities professionals must take on heightened responsibilities . . . ." Id. at *11. Smith is clearly unfit for such heightened responsibilities.

The facts that could be adduced considering that Smith defaulted in both the civil and administrative arenas show overwhelmingly that the investing public needs to be protected from Smith. There are no mitigating circumstances. Smith's non-participation should not mitigate use of the Commission's authority.

Order

I ORDER that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Alan Smith is BARRED from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock, including acting as any promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice. 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice. 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party,

then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

In addition, a respondent has the right to file a motion to set aside a default within a reasonable time, stating the reasons for the failure to appear or defend, and specifying the nature of the proposed defense. 17 C.F.R. § 201.155(b). The Commission can set aside a default at any time for good cause. Id.; see Alchemy Ventures, Inc., Exchange Act Release No. 70708, 2013 SEC LEXIS 3459, at *5-6 (Oct. 7, 2013).

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Brenda P. Murray
Chief Administrative Law Judge