INITIAL DECISION RELEASE NO. 608
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15808

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

In the Matter of	:	INITIAL DECISION OF DEFAULT
	:	June 2, 2014
AARON JOUSAN JOHNSON	:	

APPEARANCES: Susan Cooke Anderson for the Division of Enforcement, Securities and Exchange Commission

BEFORE: Cameron Elliot, Administrative Law Judge

Summary

This Initial Decision of Default grants the Division of Enforcement's (Division) Motion for Sanctions (Motion) and permanently bars Respondent Aaron Jousan Johnson (Johnson) from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (collectively, collateral bar).

Procedural Background

On March 20, 2014, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) against Johnson, pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that on October 21, 2013, the Connecticut Department of Banking, an agency that encompasses Connecticut's Securities and Business Investments Division (Connecticut Department), entered a final order (Connecticut Order) in J. Capital Advisors, LLC d/b/a J. Capital Advisors Wealth Management, Docket No. RS-13-8063-S (the Connecticut Proceeding) against Johnson. OIP at 2.

At a prehearing conference held on April 22, 2014, I deemed service of the OIP to have occurred on March 31, 2014, by hand delivery of the OIP, in accordance with Rule 141(a)(2)(i) of the Commission's Rules of Practice. Tr. 3[1]; see also Aaron Jousan Johnson, Admin. Proc. Rulings Release No. 1394, 2014 SEC LEXIS 1389 (Apr. 22, 2014) (April 22 Order); 17 C.F.R. § 201.141(a)

[1] Citation is to the prehearing transcript.

(2)(i). Johnson did not file an answer to the OIP, and I ordered him to show cause by May 2, 2014, why this proceeding should not be determined against him. April 22 Order. Johnson did not respond to that order. On May 5, 2014, I found Johnson in default, and ordered the Division to file a motion for sanctions, by June 3, 2014, providing legal authority and evidentiary support relating to the allegations in the OIP and sanctions sought by the Division. Aaron Jousan Johnson, Admin. Proc. Rulings Release No. 1414, 2014 SEC LEXIS 1546; see 17 C.F.R. §§ 201.155(a)(2), .220(f). On May 22, 2014, the Division filed its Motion, with two supporting exhibits.[2] Johnson did not respond to the Motion.

The Motion is granted. This proceeding will be determined upon consideration of the record, including the OIP, the allegations of which are deemed true. See 17 C.F.R. § 201.155(a).

Findings of Fact

From August 2009 to October 2013, Johnson, age 33, was associated with J. Capital Advisors Wealth Management (J. Capital), an investment adviser registered with the state of Connecticut, and was its president and chief investment officer. OIP at 1; Connecticut Order at 2. From July 2001 to August 2009, Johnson was associated, successively, with three other entities that were dually registered with the Commission as broker-dealers and investment advisers, including VSR Financial Services Inc., from July 2007 to August 2009, A.G. Edwards & Sons Inc., from December 2003 to July 2007, and New England Securities, from July 2001 to December 2003. OIP at 1.

In the Connecticut Proceeding, Johnson failed to appear for his evidentiary hearing and the following was deemed admitted.[3] OIP at 1-2, Connecticut Order at 3. Commencing in 2010, J.

[2] The first exhibit is the October 21, 2013, Connecticut Order (the title of the document reads Findings of Fact, Conclusions of Law and Order in the Connecticut Proceeding); a certification by the Assistant Director of the Connecticut Department accompanies this exhibit. The second exhibit is the Affidavit of Service of the OIP on Johnson. I find that these exhibits constitute uncontested affidavits within the meaning of Rule 250(a) of the Commission's Rules of Practice, and that the Motion is comparable to a motion for summary disposition, justifying the application of the Rule of Practice regarding summary disposition. See 17 C.F.R. § 201.250(a).

[3] The Connecticut Order explains that an evidentiary hearing in the Connecticut Proceeding followed the Connecticut Banking Commissioner's March 18, 2013, issuance of a charging document against Johnson, titled Notice of Intent to Suspend or Revoke Registration as an Investment Adviser and as an Investment Adviser Agent, Order Summarily Suspending Registration as an Investment Adviser and as an Investment Adviser Agent, and Notice of Right to Hearing against Respondents (Notice). Connecticut Order at 1. While the Division did not attach a copy of the Notice to its Motion, the language of the OIP and the Connecticut Order makes clear that, because Johnson defaulted in the Connecticut Proceeding, allegations in the Notice were deemed admitted in the Connecticut Proceeding. See OIP at 2; Connecticut Order at 2. Likewise, reliance on the allegations of the Notice is proper, being similar to the Commission's reliance "on the factual allegations of the injunctive complaint in a civil action settled on consent in determining the appropriate remedial action in the public interest." Marshall E. Melton, 56 S.E.C. 695, 712 (2003); see also Order Making Findings and Imposing Sanctions by Default, Florin S. Ilovici,

Capital had an arrangement with various clearing brokers pursuant to which J. Capital's advisory clients would authorize the clearing broker to pay J. Capital its fees as directed by J. Capital. OIP at 2; Connecticut Order at 3. From at least 2011 forward, the frequency and amount of fees deducted from J. Capital's client accounts at the participating clearing firms increased significantly, in some cases causing a marked depletion of client account holdings. OIP at 2; Connecticut Order at 3. Some of the affected clients filed complaints with the Connecticut Department, indicating that they had not received prior disclosure concerning the extent of the fees or the basis on which the fees were calculated. OIP at 2; Connecticut Order at 3. In the course of the Connecticut Department's examination of J. Capital, Johnson submitted three client statements to the Department that contained falsified fee amounts and a falsified personal monthly statement. OIP at 2; Connecticut Order at 4. Johnson withdrew approximately $25,000 in fees from J. Capital's clients' accounts after his investment adviser agent registration was suspended by the Connecticut Department on March 18, 2013. [4] OIP at 2; Connecticut Order at 4. J. Capital and Johnson in total withdrew about $654,000 from J. Capital's clients' accounts. Connecticut Order at 4. Johnson charged excessive fees on all but three of his clients' accounts. Id.

A final order was entered against Johnson on October 21, 2013, in the Connecticut Proceeding. OIP at 2; Connecticut Order. The Connecticut Order found that Johnson engaged in dishonest or unethical practices in connection with rendering investment advice, deducting excessive, undisclosed client advisory fees from client accounts, and violated provisions of Connecticut's securities laws. OIP at 2; Connecticut Order at 4-5. The Connecticut Order revoked the registration of Johnson as an investment adviser agent in Connecticut, and revoked the registration of J. Capital as an investment adviser in Connecticut. OIP at 2; Connecticut Order at 5-6.

Conclusions of Law

Advisers Act Section 203(f) authorizes the Commission to impose a collateral bar as a sanction against Johnson if: (1) he is subject to any final order of a state securities commission or any agency or officer performing like functions that bars him from engaging in the business of securities; (2) at the time of the misconduct, he was associated or seeking to become associated with an investment adviser; and (3) the sanction is in the public interest. 15 U.S.C. § 80b-3(e)-(f). The Connecticut Order constitutes a final order of a state securities commission or agency or officer performing like functions that imposes a bar from association with an entity regulated by such state securities commission or agency or officer, within the meaning of Advisers Act Section 203(e)(9). 15 U.S.C. § 80b-3(e)(9). During the time of his misconduct, Johnson was associated with an investment adviser. Johnson did not file an answer or oppose the Motion and therefore he has not offered any evidence to refute the conclusion that the statutory basis for a sanction has been satisfied.

Securities Exchange Act of 1934 Release No. 68285 (Nov. 23, 2012), 105 SEC Docket 61024 (findings of fact in follow-on administrative proceeding based on underlying civil complaint where respondent defaulted in underlying civil proceeding).

[4] Johnson actively initiated such fee withdrawals after his investment adviser agent registration was suspended by inputting the dollar amounts to be deducted from his clients' accounts to be swept into his sundry account. Connecticut Order at 4.

Sanction

The Division seeks a collateral bar against Johnson.[5] Mot. at 3. The appropriateness of any remedial sanction in this proceeding is guided by the public interest factors set forth in Steadman v. SEC, namely: (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 of future violations. 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); see Gary M. Kornman, Securities Exchange Act of 1934 (Exchange Act) Release No. 59403 (Feb. 13, 2009), 95 SEC Docket 14246, 14255, pet. denied, 592 F.3d 173 (D.C. Cir. 2010). The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive. Kornman, 95 SEC Docket at 14255. The Commission also considers the deterrent effect of administrative sanctions. See Schield Mgmt. Co., Exchange Act Release No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 862 & n.46. Industry bars have long been considered effective deterrence. See Guy P. Riordan, Exchange Act Release No. 61153 (Dec. 11, 2009), 97 SEC Docket 23445, 23478 & n.107 (collecting cases).

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 findings "should be grounded in specific findings regarding the protective interests to be served by barring the respondent and the risk of future misconduct." Ross Mandell, Exchange Act Release No. 71668, 2014 SEC Lexis 849, at *7-8 (Mar. 7, 2014) (internal quotation marks omitted). After engaging in such an analysis, I have determined that it is appropriate and in the public interest to collaterally bar Johnson from participation in the securities industry to the fullest extent possible.

Johnson's conduct was egregious, recurrent, and involved a high level of scienter. As the OIP and Connecticut Order explain, Johnson was at the helm of investment advisor J. Capital, which had an arrangement with various clearing brokers under which clients would authorize the clearing broker to pay J. Capital its fees as directed by J. Capital, and from at least 2011, the frequency and amount of fees deducted from client accounts at the participating clearing firms increased significantly. OIP at 2; Connecticut Order at 3. After clients filed complaints against Johnson with the Connecticut Department, he submitted falsified materials to the Connecticut Department, and after his registration as an investment adviser agent was suspended, he withdrew $25,000 in fees from client accounts. OIP at 2; Connecticut Order at 4. In total, Johnson and J. Capital withdrew about $654,000 from client accounts, and Johnson charged almost all of his clients excessive fees. Connecticut Order at 4. Because Johnson defaulted in both the Connecticut Proceeding and this proceeding, he has failed to offer assurances against future violations and to recognize the wrongful nature of his conduct.

[5] Collateral bars are applicable here regardless of the date of Johnson's violations. See John W. Lawton, Advisers Act Release No. 3513 (Dec. 13, 2012), 105 SEC Docket 61722, 61737.

In conclusion, it is in the public interest to impose a permanent, collateral bar against Johnson.

Order

It is ORDERED that the Division of Enforcement's Motion for Sanctions against Aaron Jousan Johnson is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, Aaron Jousan Johnson is permanently BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360. See 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. See 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 occurs, the Initial Decision shall not become final as to that party.

Respondent is notified that he may move to set aside the default in this case. Rule 155(b) permits the Commission, at any time, to set aside a default for good cause, in order to prevent injustice and on such conditions as may be appropriate. 17 C.F.R. § 201.155(b). A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. Id.

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Cameron Elliot
Administrative Law Judge