INITIAL DECISION RELEASE NO. 820
ADMINISTRATIVE PROCEEDING
File No. 3-16380

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

In the Matter of JORDON MCCARTY	INITIAL DECISION OF DEFAULT June 19, 2015

APPEARANCES: Andrew O. Schiff and Casey P. Cohen for the Division of Enforcement, Securities and Exchange Commission

Jordon McCarty, pro se

BEFORE: James E. Grimes, Administrative Law Judge

Summary

This Initial Decision grants the Division of Enforcement's motion for summary disposition and bars Respondent Jordon McCarty from associating 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.

Procedural Background

The Commission initiated this proceeding in February 2015, by issuing an Order Instituting Proceedings (OIP). As authority, the OIP cites Section 15(b) of the Securities Exchange Act of 1934. OIP at 1; *see* 15 U.S.C. § 78*o*(b). The OIP alleges that McCarty pleaded guilty in 2013 in the United States District Court for the Southern District of Florida to one count of conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349. OIP at 2. The OIP further alleges that the district court entered judgment in November 2013, and sentenced McCarty to 78 months' imprisonment. *Id.*

According to the OIP, McCarty acted as an unregistered broker and solicited investments in "Paradise is Mine, LLC." OIP at 1-2. The OIP alleges that he represented to investors that Paradise is Mine would purchase and develop land in the Bahamas. *Id.* The OIP further alleges that McCarty guaranteed initial investors a return of between ten and twenty percent. *Id.* The OIP also alleges that McCarty fabricated news stories about Paradise is Mine and falsely stated that professional athletes and celebrities had invested in the company. *Id.* The OIP further alleges that McCarty willfully and knowingly conspired to obtain money and property through

false and fraudulent representations and that he "received compensation in the form of misappropriated funds." *Id.*

I held prehearing conferences on March 9 and 17, 2015. Counsel for the Division of Enforcement attended both conferences. Appearing pro se, McCarty attended the second conference. During the conferences, I confirmed that McCarty was served with the OIP on February 17, 2015. Tr. 4.[1] I also granted the Division leave to move for summary disposition. Tr. 5-6.

I discussed the schedule with McCarty during the second prehearing conference. Tr. 16-18. I also asked McCarty about the fact that he had not filed an Answer to the OIP and informed him that because his Answer was overdue, he needed to file it quickly. Tr. 13-15. McCarty affirmed that he intended to file an Answer. Tr. 13.

McCarty did not subsequently file an Answer. The Division timely moved for summary disposition, supported by three exhibits: (1) the superseding indictment in *United States v. Lawrence Foster*, No. 13 CR-20063 (S.D. Fla.), the case that resulted in the conviction that is the basis for this proceeding; (2) McCarty's plea agreement in *Foster*; and (3) the judgment in *Foster*. McCarty did not file an opposition.

Findings of Fact

McCarty is in default for failing to file an Answer, respond to a dispositive motion within the time provided, or otherwise defend this proceeding. *See* OIP at 3; 17 C.F.R. §§ 201.155(a), .220(f). I therefore deem as true the OIP's allegations and determine this proceeding on consideration of those allegations, the record, and facts officially noticed under Commission Rule of Practice 323.[2] *See* 17 C.F.R. § 201.323.

McCarty was indicted in May 2013 on a superseding indictment. Indictment at 1. The first count of the indictment alleged that McCarty conspired with Lawrence Foster and Johana Leon to commit wire fraud in violation of 18 U.S.C. § 1349. *Id.* at 3-8. McCarty later entered into a plea agreement in which he agreed to plead guilty to count one. Plea Agreement at 1. In his plea agreement, McCarty agreed to the entry of a forfeiture money judgment in the amount of $2.5 million. *Id.* at 7. He agreed that this amount "represent[ed] the proceeds of the wire fraud offense to which he . . . agreed to plead guilty." *Id.*

McCarty subsequently pleaded guilty and on November 26, 2013, the district court entered its judgment against him and sentenced him to 78 months' imprisonment. Judgment at 1. The district court also entered "a money judgment in the amount of $2,500,000.00" against McCarty. Order of Forfeiture at 1.

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[1] Citation is to the consecutive transcript for the prehearing conferences.

[2] Under Rule 323, I take official notice of all the proceedings and record in *Foster*, including the superseding indictment, plea agreement, judgment, as well as the district court's order of forfeiture.

Based on the factual basis described in McCarty's plea agreement and the allegations in the OIP that I have deemed to be true, I find the following facts. From about 2009 through 2013, McCarty conspired with his co-conspirators "to defraud investors by making material misrepresentations to induce those investors to send money . . . to . . . Paradise is Mine." Plea Agreement at 14. The conspirators' scheme involved a purported real estate venture in the Bahamas known as Paradise is Mine. *Id.* McCarty and his co-conspirators told investors that Paradise is Mine was a successful real estate company that was developing properties in the Bahamas. *Id*. To support this illusion, McCarty and his co-conspirators sent and caused others to send false and fraudulent promotional materials, including purported newspaper articles containing positive stories about Paradise is Mine. *Id.*

"During telephone calls and investor meetings, McCarty [and his co-conspirators] . . . promised and caused others to promise" that investors would receive a return of between ten and twenty percent. Plea Agreement at 14. They also "guarantee[d] that investors would receive their full principal back after the expiration of a certain term." Plea Agreement at 14. These representations were false. Plea Agreement at 14-15.

McCarty and his co-conspirators failed to disclose that investors' investment "would not be used to purchase or develop land in the Bahamas." Plea Agreement at 14. They did not tell investors that instead, "a significant portion of" their investment "would be withdrawn as cash . . . for the personal use of the conspirators." *Id.* The conspirators further failed to tell investors that their investment would not be invested in the manner they were told and that the alleged news articles about Paradise is Mine were fabricated and fraudulent. *Id*.

In carrying out his scheme, McCarty "acted as an unregistered broker." OIP at 2. He "received compensation in the form of misappropriated funds." *Id*.

In addition to the foregoing scheme, McCarty admitted that he participated in another scheme in which he sought to defraud investors. Plea Agreement at 14. In total, McCarty induced approximately 100 people to invest about $6.5 million. *Id*.

Conclusions of Law

A. Summary Disposition Standard

Rule of Practice 250 governs motions for summary disposition. *See* 17 C.F.R. § 201.250. An administrative law judge "may grant [a] motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law." 17 C.F.R. § 201.250(b). "The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noticed pursuant to Rule 323." 17 C.F.R. § 201.250(a). In order to successfully challenge a motion for summary disposition, a litigant "may not rely on bare allegations or denials but instead must present specific facts showing a genuine issue of material fact for resolution at a hearing." *Daniel Imperato*, Exchange Act Release No. 74596, 2015 SEC LEXIS 1377, at *23

(Mar. 27, 2015); *see Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *21 n.24 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010).

Summary disposition is generally appropriate in "follow-on" proceedings—administrative proceedings instituted following a conviction or entry of an injunction—where the only real issue involves the determination of the appropriate sanction. *See Mitchell M. Maynard*, Investment Advisers Act of 1940 Release No. 2875, 2009 SEC LEXIS 1621, at *27 (May 15, 2009); *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at *19-20 & nn.21-24 (Feb. 4, 2008). The exception to this general rule occurs in those "rare circumstances" in which "'a respondent may present genuine issues with respect to facts that could mitigate his or her misconduct.'" *Mitchell M. Maynard*, 2009 SEC LEXIS 1621 at *27 (quoting *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 SEC LEXIS 2238, at *17 (Sept. 26, 2007), *pet. denied*, 548 F.3d 129 (D.C. Cir. 2008)). Summary disposition is appropriate here because the only issue is whether McCarty's conduct warrants imposition of the bars the Division seeks.

B. The Division's evidence demonstrates that a full collateral bar is warranted

As is relevant to this proceeding, Section 15(b) of the Exchange Act gives the Commission authority to impose a collateral bar against McCarty if three statutory factors are met: (1) at the time of his misconduct, he was associated with a broker or dealer; (2) he has been convicted of an offense that (a) involved the purchase or sale of any security; (b) "arises out of the conduct of the business of a broker [or] dealer"; (c) "involves the larceny, theft, . . . fraudulent conversion, or misappropriation of funds"; *or* (d) "involves the violation of" 18 U.S.C. §§ 1341, 1342, or 1343; and (3) imposition of the bar is in the public interest. 15 U.S.C. § 78*o*(b)(4)(B)(i)-(iv), (6)(A)(ii).

As to the first factor, a broker is a "person engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c(a)(4)(A). "The phrase 'engaged in the business' means a 'level of participation in purchasing and selling securities involv[ing] more than a few isolated transactions.'" *Anthony Fields*, Securities Act Release No. 9727, 2015 SEC LEXIS 662, at *75 (Feb. 20, 2015). The Commission has explained that a person may qualify as a broker if he is involved in "soliciting securities transactions." Strengthening the Commission's Requirements Regarding Auditor Independence, Exchange Act Release No. 47265, 68 Fed. Reg. 6006, 6014 n.82 (Feb. 5, 2003). As a result, "recruiting or soliciting potential investors" may be enough to qualify a person as a broker, even if the person in question is unregistered. *Anthony Fields*, 2015 SEC LEXIS 662 at *75; *see SEC v. George*, 426 F.3d 786, 797 (6th Cir. 2005) (being "regularly involved in communications with and recruitment of investors for the purchase of securities," is strongly indicative of acting as a broker). In addition, the receipt of transaction-based compensation is "one of the hallmarks" of being a broker. *SEC v. Kramer*, 778 F. Supp. 2d 1320, 1334 (M.D. Fla 2011) (internal quotation marks omitted).

Based on the allegations in the OIP, I have already determined that McCarty "acted as an unregistered broker." *See* OIP at 2. Moreover, the evidence shows that over a four-year period, from 2009 to 2013, McCarty was actively involved in recruiting and soliciting investors. Plea Agreement at 14. He also received transaction-based compensation in the form of

misappropriated funds. *Id.* at 14-15. Given these factors, even without the allegations in the OIP, I would conclude that Respondent was operating as a broker, and was therefore associated with a broker, at the time of his misconduct. *See George*, 426 F.3d at 797; *Anthony Fields*, 2015 SEC LEXIS 662 at *75 & n.111.

To meet the second factor, the Division need only show that McCarty has been convicted of an offense within ten years preceding the filing of the OIP that, among other things, "*involves* the violation of" 18 U.S.C. §§ 1341, 1342, or 1343. 15 U.S.C. § 78*o*(b)(4)(B)(iv), (6)(A)(ii) (emphasis added). The term "involves" applies broadly. *See Cont'l Ins. Co. v. Atlantic Cas. Ins. Co.*, 603 F.3d 169, 180 & n.9 (2d Cir. 2010). Even under a narrow interpretation, however, the Division has met the second factor. In 2013, McCarty was convicted of conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349. The object of the conspiracy was to commit wire fraud in violation of 18 U.S.C. § 1343. *See* Indictment at 3. McCarty's conviction therefore "*involve*[*d*] the violation of" 18 U.S.C. § 1343. 15 U.S.C. § 78*o*(b)(4)(B)(iv) (emphasis added). The second factor is also satisfied because McCarty's conduct involved the sale of securities, arose out of the conduct of the business of a broker, and involved fraudulent concealment and misappropriation of funds. 15 U.S.C. § 78*o*(b)(4)(B)(i)-(iii), (6)(A)(ii). For all the above reasons, the second factor is met.

With respect to the third factor, whether imposition of a collateral bar would be in the public interest, I must consider the factors set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). *See Toby G. Scammell*, Advisers Act Release No. 3961, 2014 SEC LEXIS 4193, at *23 (Oct. 29, 2014). The public interest factors include:

> 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.

Steadman, 603 F.2d at 1140 (quoting *SEC v. Blatt*, 603 F.2d 1325, 1334 n.29 (5th Cir. 1978)). "The . . . inquiry into the appropriate sanction to protect the public interest is . . . flexible . . . and no one factor is dispositive." *Conrad P. Seghers*, 2007 SEC LEXIS 2238, at *13. The Commission also considers the degree of harm resulting from the violation, *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *100 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002), and the deterrent effect of administrative sanctions, *Daniel Imperato*, 2015 SEC LEXIS 1377 at *16 & n.17. In this latter regard, industry bars are considered an effective deterrent. *See Guy P. Riordan*, Exchange Act Release No. 61153, 2009 SEC LEXIS 4166, at *81 & n.107 (Dec. 11, 2009), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010).

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." *Ross Mandell*, Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7-8 (Mar. 7, 2014) (quoting *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir.

2005)). An administrative law judge's decision to impose an industry-wide bar "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 *8 (quoting *McCarthy*, 406 F.3d at 189-90).

The public interest would best be served by imposing a full collateral bar. McCarty's conduct was egregious. McCarty and his co-conspirators "solicited individuals to invest in the company Paradise is Mine, offering investment opportunities in a supposed land development deal in the Bahamas." Plea Agreement at 14. He and his co-conspirators made "material misrepresentations to induce those investors to send money," including "falsely and fraudulently promis[ing] and caus[ing] others to promise investors a fixed interest rate of between 10% and 20% of their investment . . . [and] that investors would receive their full principal back." *Id.* The depth of deception also involved sending to investors "false and fraudulent promotional materials, including purported newspaper articles containing positive stories about *Paradise is Mine*." *Id.* McCarty and his co-conspirators never disclosed to potential investors that a significant portion of their money would not be invested, but would instead be withdrawn for their personal use. *Id.* The district court entered a money judgment in the amount of $2.5 million, "represent[ing] the proceeds" of McCarty's misconduct related to Paradise is Mine. Order of Forfeiture at 1. Through his misconduct underlying his conviction and his misconduct in a separate fraudulent scheme, McCarty induced approximately $6.5 million in investment. Plea Agreement at 14. These facts show that McCarty is ill-suited to remain in the securities industry.

As evidenced by his misconduct and the amount ordered forfeited by the court, McCarty and his co-conspirators "made substantial profits from [their] misconduct while inflicting substantial harm on others." *Charles Trento*, Securities Act Release No. 8391, 2004 SEC LEXIS 389, at *11(Feb. 24, 2004). As in *Gregory Bartko*, McCarty "violated the most basic investor protection principles in the securities laws, orchestrating a conspiracy that defrauded [multiple] investors out of" a large amount of money over a period of years. Exchange Act Release No. 71666, 2014 SEC LEXIS 841, at *39 (Mar. 7, 2014). And he did so by lying to investors about the subject of their investment and omitting material information, such as the crucial fact that funds raised would not be used as intended "to purchase and develop land in the Bahamas."

McCarty's conduct was also recurrent. First, McCarty's scheme lasted a number of years. Plea Agreement at 14. Second, McCarty admitted that he participated in another fraudulent scheme. *Id.* In combination, the two schemes netted McCarty about 100 victims. *Id.*

McCarty acted with a high degree of scienter. *See United States v. Feola*, 420 U.S. 671, 686 (1975) (conspiracy involves the degree of criminal intent necessary for the substantive offense); *United States v. Maxwell*, 579 F.3d 1282, 1301-02 (11th Cir. 2009) (wire fraud involves specific intent to defraud). McCarty lied to investors over and over again. He made numerous promises to investors, guaranteeing high fixed interest rates and the return of principal. Plea Agreement at 14. All the while, he knew that these guarantees were impossible, because, among other things, he and his co-conspirators were misappropriating investment money for their own personal benefit. *Id.* at 14-15. McCarty was also responsible for sending false and fraudulent promotional materials about Paradise is Mine, at least some of which were fabricated

by his co-conspirator. *Id.* at 14. He told investors their money would be used to purchase and develop land in the Bahamas. *Id.* In fact, it was used for the conspirators' personal benefit. And he lied to investors when he repeatedly guaranteed returns. The scope and number of lies McCarty told further demonstrates that he acted with a high degree of scienter.

Although "[c]ourts have held the existence of a past violation, without more, is not a sufficient basis for imposing a bar[,] . . . 'the existence of a violation raises an inference that it will be repeated.'" *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *23 n.50 (July 26, 2013) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)) (alteration in internal quotation omitted). Here, McCarty has made no assurances against future violations or demonstrated that he recognizes the wrongfulness of his conduct, and therefore has done nothing to rebut that inference. Indeed, he has neither answered the OIP nor filed an opposition to the Division's motion for summary disposition. Moreover, based on the long-running fraud for which he is incarcerated, I infer that if given the opportunity, he would likely engage in similar conduct. *Cf. Charles Trento*, 2004 SEC LEXIS 389 at *12 ("egregious misconduct over a" period of years "carries with it the risk that it may be repeated after [a respondent] completes his sentence"). This determination is also supported by the fact that McCarty participated in multiple schemes.

Although McCarty is currently incarcerated, there is no guarantee that he will not engage in similar misconduct when he is released. Indeed, the Commission does not view a "criminal sentence as mitigative of the appropriate sanction to be imposed in the public interest." *See Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 SEC LEXIS 158, at *27 (Jan. 14, 2011).

As a final matter, I find that a full collateral bar will serve as a general and specific deterrent. It will deter McCarty and will further the Commission's interest in deterring others from engaging in similar misconduct. Given the foregoing, I find that McCarty is not suited to remain in the securities industry and that it is in the public interest to impose a permanent, direct and collateral bar against him.

Order

It is ORDERED that, pursuant to Rule 250(b) of the Securities and Exchange Commission's Rules of Practice, the Division of Enforcement's Motion for Summary Disposition is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Jordon McCarty is permanently BARRED from associating 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.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360, 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, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then a 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.

McCarty may move to set aside the default in this case. Rule of Practice 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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James E. Grimes
Administrative Law Judge