INITIAL DECISION RELEASE NO. 1001
ADMINISTRATIVE PROCEEDING
FILE NO. 3-17043

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

In the Matter of PAUL D. CRAWFORD	INITIAL DECISION April 18, 2016

APPEARANCES: Timothy J. Stockwell and Jonathan S. Polish for the Division of Enforcement, Securities and Exchange Commission

Paul Engh, Esq., for Respondent Paul D. Crawford

BEFORE: Cameron Elliot, Administrative Law Judge

SUMMARY

A United States District Court found that Respondent Paul D. Crawford received, directly or indirectly, $240,000 in commissions as an unregistered broker between 2004 and 2006, in violation of Section 15(a) of the Securities Exchange Act of 1934, and enjoined him from acting as an unregistered broker in the future. I grant the Division of Enforcement's motion for summary disposition against Crawford, and find that it is in the public interest to permanently bar him from association with a broker, dealer, investment adviser, municipal securities dealer, or transfer agent (associational bar).

PROCEDURAL BACKGROUND

On January 11, 2016, the Securities and Exchange Commission issued an order instituting proceedings (OIP) against Crawford pursuant to Section 15(b) of the Exchange Act. The OIP alleges that Crawford was enjoined from violating Section 15(a) of the Exchange Act in *SEC v. Collyard*, No. 11-cv-3656, 2015 U.S. Dist. LEXIS 165011 (D. Minn. Dec. 9, 2015) (*Collyard*). OIP at 2. Crawford was served with the OIP on January 13, 2016. *Paul D. Crawford*, Admin. Proc. Rulings Release No. 3538, 2016 SEC LEXIS 282 (ALJ Jan. 27, 2016). He subsequently submitted an answer, in which he admitted certain facts alleged in the OIP and denied others. Answer at 1-2. The Division filed its motion for summary disposition on February 29, 2016, Crawford filed an opposition on March 28, 2016, and the Division filed a reply on April 7, 2016.

The Division attached nine exhibits from *Collyard* to its motion for summary disposition: the civil complaint against Crawford, his company, Crawford Capital Corp. (CCC), and co-defendants (Ex. 1); the amended civil complaint against Crawford, CCC, and co-defendants (Ex. 2);[1] the Commission's motion for summary judgment against Crawford and CCC (Ex. 3); the exhibits attached to the Commission's motion for summary judgment (Ex. 4); Crawford's and CCC's opposition to the Commission's motion for summary judgment (Ex. 5); the Commission's reply to Crawford's and CCC's opposition (Ex. 6); the order from the district court granting in part the Commission's motion for summary judgment (Ex. 7); the district court judgment enjoining Crawford and CCC (Ex. 8); and the district court judgment against Crawford and CCC for disgorgement and prejudgment interest (Ex. 9). Crawford submitted no exhibits.

SUMMARY DISPOSITION STANDARD AND PROCEDURAL ISSUES

A motion for summary disposition may be granted 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 17 C.F.R. § 201.323. 17 C.F.R. § 201.250(a).

The Commission has repeatedly upheld use of summary disposition in cases such as this, where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction. *See Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *40-41 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010); *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at *19-20 & n.21 (Feb. 4, 2008) (collecting cases), *pet. denied*, 561 F.3d 548 (6th Cir. 2009).

The findings and conclusions in this initial decision are based on the record and on facts officially noticed pursuant to Rule of Practice 323. *See* 17 C.F.R. § 201.323. The parties' filings and all documents and exhibits of record have been fully reviewed and carefully considered. Preponderance of the evidence has been applied as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981). All arguments and proposed findings and conclusions that are inconsistent with this initial decision have been considered and rejected.

Crawford argues that this proceeding is time-barred because it was not brought within the statute of limitations set forth in 28 U.S.C. § 2462. Opp. at 8-10. This argument fails. The five-year statute of limitations of 28 U.S.C. § 2462 begins to run from the date of the conviction or injunction on which the action is based, not the date of the underlying conduct. *See Joseph Contorinis*, Exchange Act Release No. 72031, 2014 SEC LEXIS 1443, at *11 & n.17 (Apr. 25,

[1] The amended complaint added allegations only against Crawford's co-defendants, and the allegations against Crawford and his company remained the same as those in the original complaint. *Compare* Ex. 1 *with* Ex. 2. As such, references to the "complaint" in this initial decision refer to the original complaint to avoid confusion.

2014). This proceeding was instituted approximately one month after the injunction issued in the district court, well within the limitations period.

FACTUAL BACKGROUND

Crawford, aged 80 at the time the OIP issued, was associated with registered broker-dealers from 1969 to approximately 1996. Answer at 1; Ex. 7 at 5. In 1997, the National Association of Securities Dealers censured him and suspended his license for two years for selling securities in an unregistered offering. Answer at 1; Ex. 7 at 5. Crawford never reinstated his license, and during the time of his misconduct, he was not registered as a broker or associated with a registered broker-dealer. Answer at 1; Ex. 7 at 5. During the relevant period of his misconduct, Crawford owned and operated CCC, a Minnesota corporation that Crawford promoted and continues to promote as a company that works with early stage companies in assisting their planning for raising capital. Answer at 1. CCC has never been a registered broker-dealer. *Id*.

Crawford entered into a consulting agreement with Bixby Energy Systems, Inc., pursuant to which Bixby paid a 10% fee on any investments in Bixby stock made by persons whom Crawford "found" and referred to Bixby. Ex. 7 at 3. From February 2004 to November 2006, Crawford and CCC collectively received $240,000 in fees from Bixby, representing 10% of the over $2 million in investments that individuals referred by Crawford had made in Bixby. *Id*. Crawford made "significant and multi-faceted" efforts to connect investors with Bixby, including: inviting potential investors to Bixby presentations; emailing CCC clients, unsolicited, to suggest investments in Bixby; requesting that Bixby send private placement memoranda to potential investors identified by Crawford; and representing to CCC clients that he could negotiate prices of Bixby stock. *Id*. at 4. Crawford performed these functions without registering as a broker with the Commission. *Id*. at 5.

The Commission filed suit against Crawford, CCC, and seven co-defendants on December 21, 2011, alleging (as to Crawford and CCC) violations of Section 15(a) of the Exchange Act. Ex. 1. On December 9, 2015, the district court granted in part the Commission's summary judgment motion against Crawford and CCC, and permanently enjoined them from future violations of Section 15(a). Ex. 8. On January 28, 2016, after the OIP issued, the district court issued a second judgment against Crawford and CCC, for $240,000 in disgorgement and $128,692.22 in prejudgment interest. Ex. 9. Crawford has appealed the district court's judgment to the U.S. Court of Appeals for the Eighth Circuit. Opp. at 1; *see SEC v. Crawford*, No. 16-1405 (8th Cir. filed Feb. 17, 2016).

DISCUSSION

Under Exchange Act Section 15(b)(6), an associational bar is authorized in this proceeding if: (1) Crawford was permanently enjoined from any action, conduct or practice specified in Exchange Act Section 15(b)(4)(C), which includes any conduct or practice in connection with acting as a broker-dealer or in connection with the purchase or sale of any security; (2) he was associated with a broker or dealer, whether registered or unregistered, at the time of the misconduct; and (3) the sanction is in the public interest. 15 U.S.C. § 78*o*(b)(4)(C),

(6)(A)(iii); *see Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *32 (July 26, 2013) (holding that it is "well established that [the Commission is] authorized to sanction an associated person of an unregistered broker-dealer or investment adviser in a follow-on administrative proceeding").

A. Crawford was enjoined from acting as an unregistered broker

Crawford was permanently enjoined by the district court from violating Section 15(a) of the Exchange Act. *See Collyard*, 2015 U.S. Dist. LEXIS 165011. Section 15(a) of the Exchange Act makes it unlawful for a broker to "make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security. . . unless such broker or dealer is registered" with the Commission in accordance with Section 15(b). 15 U.S.C. §78*o*(a). Thus, Crawford was permanently enjoined from participating in conduct in connection with acting as a broker-dealer and with the purchase or sale of a security, and his injunction establishes the first prerequisite for an associational bar.

B. Crawford acted as a broker

The district court, in a thorough and rigorous analysis of Crawford's actions, "easily" concluded that Crawford acted as an unregistered broker, and not as merely a "finder." Ex. 7 at 5-12. Although Crawford continues to dispute this holding, collateral estoppel precludes him from contesting it here. *See Daniel Imperato*, Exchange Act Release No. 74596, 2015 SEC LEXIS 1377, at *15 (Mar. 27, 2015) ("The doctrine of collateral estoppel precludes [respondent] from attacking in this proceeding the injunction and factual and procedural issues actually litigated and necessary to the district court's decision."), *recons. denied*, Exchange Act Release No. 74886, 2015 SEC LEXIS 1769 (May 6, 2015); Opp. at 2-8. The appropriate course of action is to challenge the district court's findings on appeal, which he has done. *See Crawford*, No. 16-1405; Opp. at 1. Nor is a stay of the proceedings pending appeal warranted. *Michael Batterman*, 57 S.E.C. 1031, 1036 n.10 (2004); *see also Blinder, Robinson & Co. v. SEC*, 837 F.2d 1099, 1104 n.6 (D.C. Cir. 1988) (stating "the fact that a judgment is pending on appeal ordinarily does not detract from its finality (and therefore its preclusive effect) for purposes of subsequent litigation"). If Crawford prevails on his appeal, he may file a motion to vacate any final agency action in this matter. *James E. Franklin*, Exchange Act Release No. 56649, 2007 SEC LEXIS 2420, at *12 (Oct. 12, 2007).

C. The public interest warrants a permanent associational bar

The Division seeks a permanent associational bar against Crawford. Motion at 2, 10. The Division does not seek to bar Crawford from associating with a municipal advisor or nationally recognized statistical rating organization, because such bars were not available prior to the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010. Motion at 7 n.6 (citing *Koch v. SEC*, 793 F.3d 147, 158 (D.C. Cir. 2015)).

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 that the respondent's occupation will present opportunities for future violations. 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Gary M. Kornman*, 2009 SEC LEXIS 367, at *22. The Commission has also considered the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and the deterrent effect of administrative sanctions. *See Schield, Mgmt. Co.*, 58 S.E.C. 1197, 1217-18 (2006); *Marshall E. Melton*, 56 S.E.C. 695, 698 (2003). The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive. *Gary M. Kornman*, 2009 SEC LEXIS 367, at *22.

Egregiousness and recurrence

Crawford's misconduct was egregious and recurrent. In requiring that brokers or dealers register with the Commission in order to purchase or sell securities, Section 15(a) "ensure[s] that customers . . . receive either the regulatory protections that result from a [broker] being registered himself or the protections that stem from the [broker] being supervised by a registered firm." *Anthony Fields*, Exchange Act Release No. 74344, 2015 SEC LEXIS 662, at *72-73 (Feb. 20, 2015) (first alteration in original) (quoting *Charles A. Roth*, 50 S.E.C. 1147, 1152 (1992), *pet. denied*, 22 F.3d 1108 (D.C. Cir. 1994)). Crawford acted as a broker for Bixby for over two years, during which he and CCC received $240,000 in commissions and brought in more than $2 million in investments from multiple investors. Ex. 7 at 10, 16. He actively solicited clients to invest or reinvest in Bixby and other issuers without registering as a broker, and he continued this conduct even after the Commission filed its civil complaint. *Id*. As a result of his failure to register as a broker with the Commission, Crawford's clients did not receive the regulatory protections provided by Section 15(a) while investing millions of dollars in the companies Crawford was promoting.

Scienter

Crawford acted with scienter. "Scienter is a mental state consisting of an intent to deceive, manipulate, or defraud, and includes recklessness, commonly defined as an extreme departure from the standards of ordinary care . . . to the extent that the danger was either known to the [respondent] or so obvious that the [respondent] must have been aware of it." *Johnny Clifton*, Exchange Act Release No. 69982, 2013 SEC LEXIS 2022, at *39 n.67 (July 12, 2013) (internal quotations omitted; alterations in original). Scienter is not required to prove a violation of Section 15(a)(1). *Anthony Fields*, 2015 SEC LEXIS 662, at *73. Nonetheless, the district court found that Crawford "was at least reckless in failing to renew his license when he continued in the business of soliciting investors . . . and engaging in other activities typical of brokers." Ex. 7 at 12. Additionally, the district court found there was no genuine dispute "that Crawford was aware of 'securities issues' related to his agreement with Bixby, which support[ed] an inference that Crawford knew he was violating the securities laws." *Id*. Crawford's scienter thus weighs in favor of a heavy sanction.

Assurances against future violations, recognition of wrongful conduct, and likelihood of future violations

Crawford has made no assurances against future violations. He has provided no indication that he recognizes the wrongful nature of his conduct, instead insisting that his actions fall within a "finder's exception" to Section 15(a)'s requirements. Opp. at 2-8; *see* Ex. 7 at 11-12. That he exercised his right to dispute the charges against him in district court and on appeal does not undermine this finding. *Seghers v. SEC*, 548 F.3d 129, 136-37 (D.C. Cir. 2008) (holding that a respondent's choice not to recognize the wrongfulness of his conduct and risk more severe remedial action, while an appeal is pending, does not unconstitutionally burden the respondent or deny him of due process). And given that he has spent much of his working life either associated with a broker-dealer or acting as an unregistered broker, his occupation will present opportunities for future violations. Answer at 1.

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*, 2013 SEC LEXIS 2155, at *23 n.50 (alteration in internal quotation omitted) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)); *see Gann v. SEC*, 361 F. App'x 556, 560 (5th Cir. 2010) (affirming permanent associational bar and stating "if [respondent] doesn't know right from wrong in this industry, how can he avoid wrongdoing in the future?"). Crawford has done nothing in this proceeding to rebut that inference.

Other considerations

Each of the *Steadman* factors weighs in favor of a permanent associational bar: Crawford recklessly engaged in egregious and recurrent misconduct, he has not recognized the wrongfulness of his misconduct or provided assurances against future wrongdoing, and his occupation presents a risk of recurrence. On the other hand, Crawford's violations were not recent, and although the Division states that Bixby "ended up being one of the largest frauds in Minnesota history in which investors lost more than $56 million," it offers no evidence quantifying the harm to investors and the marketplace from Crawford operating as an unregistered broker. Motion at 1.

Several other facts, however, demonstrate Crawford's lack of current competence and a substantial degree of risk to investors and securities markets posed by Crawford's continuance in the securities industry. *See Gregory Bartko*, Exchange Act Release No. 71666, 2014 SEC LEXIS 841, at *34 (Mar. 7, 2014). Crawford was previously disciplined for violating the securities laws and failed to renew his license after a two-year suspension was lifted, even though he had previously registered with the Commission and was thus presumably familiar with the registration requirements. *See* Answer at 1. The district court found that there was undisputed deposition testimony showing that Crawford continued to act as a broker, soliciting clients to invest or reinvest in Bixby as late as 2011 and 2012, even after the Commission filed its complaint. Ex. 7 at 16. The district court concluded that it appeared "reasonably likely" that Crawford would violate the securities laws in the future and enjoined Crawford and CCC to

"prevent the likelihood that they will otherwise violate Section 15(a) again." *Id*. at 17. Also, a permanent and full associational bar "will prevent [Crawford] from putting investors at further risk and serve as a deterrent to others from engaging in similar misconduct." *Montford and Co.*, Investment Advisers Act of 1940 Release No. 3829, 2014 SEC LEXIS 1529, at *86-87 (May 2, 2014).

On balance, the public interest factors weigh in favor of a permanent and full associational bar against Crawford. The securities industry "relies on the fairness and integrity of all persons associated with each of the professions covered by the [industry] bar to forgo opportunities to defraud and abuse other market participants." *John W. Lawton*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855, at *43 (Dec. 13, 2012). Crawford's misconduct demonstrates that he is incapable of such fairness and integrity.

ORDER

It is ORDERED that, pursuant to Rule 250 of the Commission's Rules of Practice, the Division of Enforcement's motion for summary disposition against Respondent Paul D. Crawford is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, Paul D. Crawford is permanently BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, or transfer agent.

This initial decision shall become effective in accordance with and subject to the provisions of Rule 360. *See* 17 C.F.R. § 201.360. Under 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 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.

_____

Cameron Elliot
Administrative Law Judge