INITIAL DECISION RELEASE NO. 1036
ADMINISTRATIVE PROCEEDING
FILE NO. 3-17004

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

| | |
|---|---|
| In the Matter of<br><br>DEVEN SELLERS and<br>ROLAND BARRERA | INITIAL DECISION<br>July 14, 2016 |

APPEARANCES: Timothy S. McCole for the Division of Enforcement, Securities and Exchange Commission

Deven Sellers, pro se

Roland Barrera, pro se

BEFORE: Cameron Elliot, Administrative Law Judge

## Summary

In October 2015, Respondents Deven Sellers and Roland Barrera were permanently enjoined in federal district court from future violations of Section 17(a) of the Securities Act of 1933 and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The district court found that Respondents acted as unregistered brokers during the period in which their violations of the antifraud provisions occurred, and they were ordered to pay substantial disgorgement and civil penalties. The Division of Enforcement now asks that I bar both Respondents 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 (industry bar). In this initial decision, I grant in part and deny in part the Division of Enforcement's motion for summary disposition, and deny Barrera's motion for summary disposition. I find that it is in the public interest that Sellers be barred from the industry, and find that the public interest is appropriately served by barring Barrera from the industry with a right to reapply in five years.

## Procedural Background

The Securities and Exchange Commission issued an order instituting administrative proceedings (OIP) against Respondents on December 15, 2015, pursuant to Section 15(b) of the Exchange Act. The OIP alleges that Respondents solicited investors to purchase limited partnership

interests issued by a Texas company called Vendetta Royalty Partners and by two of its affiliated companies, without either registering with the Commission as brokers or associating with a registered broker. OIP at 1-2. The OIP also describes the Commission's allegation in the underlying civil proceeding that Sellers and Barrera misrepresented the amount of their combined commission on the sale at issue. *Id.* at 2. It further alleges that both Respondents were permanently enjoined by the United States District Court for the Western District of Texas from future violations of Securities Act Section 17(a), Exchange Act Sections 10(b) and 15(a), and Exchange Act Rule 10b-5. *Id.*

Respondents were served with the OIP by December 26, 2015. *Deven Sellers*, Admin. Proc. Rulings Release No. 3547, 2016 SEC LEXIS 299 (ALJ Jan. 28, 2016). Respondents and the Division filed a joint prehearing conference statement on January 25, 2016, in which Respondents stipulated to the existence of the permanent injunctions against them and to the admissibility of certain documents from the district court proceeding. The parties also agreed to a briefing schedule for motions for summary disposition, which I adopted. *Id.* A telephonic prehearing conference was held on February 4, 2016, at which all parties appeared. Based on the stipulations made by Respondents and their representations at the conference, I dispensed with the requirement that they file answers to the OIP. Tr. 7.

The Division filed a motion for summary disposition against Respondents on February 29, 2016, with an appendix containing: (1) the district court's memorandum opinion and order on the Division's motion for summary judgment, (2) Barrera's motion for reconsideration of that order, (3) the district court's order denying Barrera's motion for reconsideration, (4) the final judgment against Sellers, Barrera, and their two co-defendants, (5) the parties' joint prehearing conference statement filed in this proceeding, and (6) the Division's complaint in the district court proceeding. Neither Barrera nor Sellers filed an opposition to the Division's motion, but Barrera requested and was granted an extension to March 25, 2016, to file his own motion for summary disposition. *Deven Sellers*, Admin. Proc. Rulings Release No. 3720, 2016 SEC LEXIS 1030 (ALJ Mar. 17, 2016). Barrera filed his motion for summary disposition on March 29, 2016, and the Division filed an opposition on April 8, 2016. Barrera did not file a reply.

## Summary Disposition Standard

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 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). The Commission has repeatedly upheld the 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). Under Commission precedent, the circumstances in which summary disposition in a follow-on

proceeding involving fraud is not appropriate "will be rare." *John S. Brownson*, 55 S.E.C. 1023, 1028 n.12 (2002), *pet. denied*, 66 F. App'x 687 (9th Cir. 2003).

Despite its approval of the use of motions for summary disposition in this context, the Commission has expressed concern about relying on certain types of evidence when ruling on such motions. In *Gary L. McDuff*, the Commission found that "the law judge erred in relying on [a] default judgment as a basis for finding that [the respondent] acted as [a] . . . broker or dealer at the time of his alleged misconduct," one of the prerequisites for liability under Exchange Act Section 15(b). Exchange Act Release No. 74803, 2015 SEC LEXIS 1657, at *6 (Apr. 23, 2015); *see* 15 U.S.C. § 78*o*(b)(6). But the Commission explained that a default judgment could have preclusive effect in a follow-on proceeding if there were "substantive findings that . . . *accompanied* the entry of default." *Gary L. McDuff*, 2015 SEC LEXIS 1657, at *8. The Commission cited several prior decisions in which it imposed sanctions based on default injunctions, briefly describing the circumstances of each case. *Id.* at *8 n.14. *McDuff* echoed the Commission's prior opinion in *Don Warner Reinhard*, in which it criticized the law judge's reliance on a district court's "limited findings regarding the allegations made in the injunctive complaint." Exchange Act Release No. 61506, 2010 SEC LEXIS 1010, at *14 (Feb. 4, 2010). As in *McDuff*, the Commission alluded in *Reinhard* to situations in which a district court could "receive[] evidence and make[] findings following entry of a default judgment with relevance to our sanctions analysis." *Id.* at *14 n.25.

Sellers and Barrera defaulted in the civil case underlying this proceeding; the court clerk entered defaults against each Respondent on April 18, 2014. *SEC v. Helms*, No. 1:13-cv-1036 (W.D. Tex.), ECF Nos. 58-59 (*SEC v. Helms*).[1] The Division thereafter filed a motion for summary judgment, which the court granted on August 21, 2015. Div. App. at 1. But the court did not grant the motion because Respondents had defaulted; indeed, its order does not even acknowledge the existence of the defaults entered by the court clerk. *Id.* at 1-42. While the court noted that neither Respondent had responded to the Division's motion for summary judgment, it also explained that despite this failure it was "not permit[ted] . . . to enter a 'default' summary judgment in favor of the SEC." *Id.* at 2 & n.1. The court instead went on to analyze in detail the unrebutted evidence attached to the Division's motion, including emails, financial documents, and excerpts of the investigative testimony of both Sellers and Barrera, and ultimately concluded that the Division had proven the alleged violations. *Id.* at 13-17, 29-34; *see SEC v. Helms*, ECF No. 261-1.

Other than answering the complaint and sitting for a deposition, Sellers did not participate in the district court proceeding. *SEC v. Helms*, ECF Nos. 61, 261-1 at 2. But though the clerk entered a default against him, the court went on to make findings regarding his activities as a broker and his related misconduct based on a thorough review of the substantial documentary and testimonial evidence attached to the Division's motion for summary judgment. Its order contains the type of "substantive findings" described in *McDuff* that, though arising in the context of a default, nonetheless provide an adequate basis to determine appropriate sanctions in a follow-on proceeding and can have preclusive effect. *See Gary L. McDuff*, 2015 SEC LEXIS 1657, at *7-8. Like the cases cited in *McDuff* and the circumstances described in *Reinhard*, the district court made specific findings of fact and accepted and considered evidence related to Sellers' activities as a broker, his

[1] I take official notice of the proceeding, docket sheet, and records in *SEC v. Helms*, No. 1:13-cv-1036, pursuant to 17 C.F.R. § 201.323.

misconduct, and the public interest. *See id.* at *8 n.14; *Don Warner Reinhard*, 2010 SEC LEXIS 1010, at *14 n.25. Although Sellers did not respond to the Division's motion for summary judgment in the district court action, the district court explicitly noted that it could not decide the proceeding against him on default. Div. App. at 2 n.1. Instead, the issues were actually litigated despite his lack of participation. *See* Restatement (Second) of Judgments § 27 cmt. d (1982) ("When an issue is properly raised, by the pleadings or otherwise, and is submitted for determination, and is determined, the issue is actually litigated . . . . An issue may be submitted and determined on . . . a motion for summary judgment[.]"). This initial decision therefore relies on the district court's summary judgment order in evaluating what sanctions are appropriate for Sellers.

Unlike Sellers, Barrera did not remain inactive in the district court proceeding. On October 9, 2015, he filed a motion asking the court to reconsider its summary judgment ruling. Div. App. at 43. Attached to his motion were emails and other documents supporting his contention that he did not violate the antifraud or broker registration provisions of the securities laws. *Id*. at 59-79. As an initial matter, the court rejected the Division's argument that Barrera's motion should be considered under Federal Rules of Civil Procedure 59(e) or 60(b) as an amendment to or request for relief from the court's summary judgment order.[2] *Id.* at 81. The district court determined that it retained plenary power to review its previous order, and it "therefore consider[ed] Barrera's arguments and evidence under the ordinary standard applicable to a nonmovant resisting a motion for summary judgment." *Id*. Even after considering Barrera's motion in the light most favorable to him, however, the court concluded that "[e]ven under [that] generous standard, the argument and evidence . . . fail[ed] to raise any issue of material fact with regard to Barrera's liability." *Id.* at 82. A final judgment enjoining Respondents was entered on October 21, 2015. *Id.* at 88.

The district court treated Barrera's motion as an opposition to the Division's motion for summary judgment; the court ignored the fact that Barrera had defaulted and previously failed to file a response to the Division's motion. Div. App. at 81-82. Practically speaking, the case against Barrera was actually litigated at the summary judgment stage and was decided against him on the merits, after a careful review of the documentary and testimonial evidence. As a result, my reliance on the district court's summary judgment and reconsideration orders is appropriate and does not implicate the concerns expressed in *McDuff* and *Reinhard*. *See, e.g.*, *Daniel Imperato*, Exchange Act Release No. 74596, 2015 SEC LEXIS 1377, at *15 nn. 23-24, *22 (Mar. 27, 2015) (giving preclusive effect to a district court's factual findings and legal conclusions in the context of a litigated summary judgment motion).

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*,

[2] Rule 59(e) governs a party's motion to alter or amend a judgment, which must be filed no later than twenty-eight days after the entry of the judgment. Fed. R. Civ. Proc. 59(e). Rule 60(b) permits a court to grant relief from a final judgment or order under certain limited circumstances such as mistake, newly discovered evidence, or fraud by an opposing party. Fed. R. Civ. Proc. 60(b).

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.

## Findings of Fact and Conclusions of Law

Exchange Act Section 15(b)(6) authorizes the Commission to impose industry bars against Respondents if: (1) at the time of the alleged misconduct, Respondents were associated with a broker; (2) Respondents were enjoined from any action, conduct, or practice specified in Exchange Act Section 15(b)(4), including "engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security"; and (3) the sanction is in the public interest. 15 U.S.C. § 78*o*(b)(4)(C), (6)(A)(iii).

The district court found that Respondents acted as brokers during the time of their misconduct, satisfying the first element. Div. App. at 33-34; *see David F. Bandimere*, Securities Act Release No. 9972, 2015 SEC LEXIS 4472, at *99-100 (Oct. 29, 2015) (holding that a person acting as a broker satisfies Section 15(b)(6)'s requirement of association with a broker). The second element is also satisfied because both Respondents were enjoined from violations of Exchange Act Sections 15(a) and 10(b) and Rule 10(b)(5) and Securities Act Section 17(a), *i.e.*, "conduct . . . in connection with the purchase or sale of any security" within the meaning of Exchange Act Section 15(b)(4)(C). 15 U.S.C. § 78*o*(b)(4)(C). Accordingly, a sanction will be imposed if it is in the public interest.

## Sanctions

The Division seeks full industry bars against Sellers and Barrera. Div. Mot. at 7. The criteria to determine whether this sanction is in the public interest are the *Steadman* factors: (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. *Steadman v. SEC*, 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 also considers 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 & n.46 (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 flexible, and no one factor is dispositive. *Gary M. Kornman*, 2009 SEC LEXIS 367, at *22. In deciding whether the public interest warrants an industry bar, I must determine that "such a remedy is necessary or appropriate to protect investors and markets." *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 (Mar. 7, 2014), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 WL 3030883 (May 26, 2016).

### A. Background of Respondents' Misconduct

Respondents' two co-defendants in the district court proceeding, Robert Helms and Janniece Kaelin, operated and controlled a company called Vendetta Royalty Partners and

several other affiliated entities. Div. App. at 3. Vendetta was organized and marketed as a standard limited partnership that would hold and distribute royalty interests from approximately two thousand oil and gas wells located primarily in Texas. *Id.* It began soliciting investors in at least July 2011, and ultimately raised approximately $31,422,861 by selling limited partnership interests to as many as 129 investors. *Id.* The district court concluded that Helms and Kaelin operated Vendetta and its affiliates as a Ponzi scheme, and misappropriated over $8 million for their personal use. *Id.* at 25-26, 40.

Sellers is Kaelin's cousin. Div. App. at 13. Sellers worked for Vendetta during 2012, selling the company's securities in the form of limited partnership interests. *Id.* at 13, 24. In mid-2012, he invited Barrera to join him in selling Vendetta securities and the securities of several of its affiliated entities. *Id.* at 13. The two agreed to split any commissions earned on investments brought in by Barrera. *Id.* Barrera then contacted and set up a meeting with his friend, Jamie Moore, who represented an investment company called Lacova Capital LLC. *Id.* Sellers, Barrera, and Moore all met to discuss the investment opportunity, and Sellers and Barrera remained in contact with Moore after the meeting to negotiate the terms of the investment. *Id.* at 14. Lacova ultimately invested $3,050,000 in Vendetta on August 13 and 14, 2012. *Id.* at 15. In return, Vendetta paid Sellers $212,500 and Barrera $211,000. *Id.*

These substantial commissions were not disclosed to Moore. Div. App. at 15. During the initial meeting, Sellers claimed that he and Barrera would receive a "small" payment for securing the investment, a characterization that Barrera did not dispute. *Id.* Moore asked Barrera after the meeting whether Barrera "was going to get anything," but Barrera considered the subject none of Moore's business and said only that Sellers "was going to take care of [him]." *Id.* Sellers also emailed Moore a private placement memorandum (PPM), copying Barrera, which represented that Vendetta would use no more than $50,000 of the offering proceeds for "Promotional Expenses" such as commissions. *Id.* Sellers admitted that he read the PPM prior to distributing it; Barrera claimed he did not read the document. *Id.* Contrary to the statement in the PPM, Respondents' combined commissions totaled $423,500. *Id.* at 16.

Respondents were also involved in the offer of limited partnership interests in Vesta Royalty Partners, one of the companies affiliated with Vendetta. Div. App. at 16. Sellers emailed Moore an offer to sell Vesta securities, copying Barrera, and he also offered to sell Moore's business partner securities issued by a third entity. *Id.* at 16-17. Neither Respondent has ever registered as a broker or become associated with a registered broker. *Id.*

### B. An Industry-Wide Bar Against Sellers is in the Public Interest

*1. Egregiousness, recency, and recurrence*

Sellers' conduct was egregious. He made material misrepresentations regarding the size of his and Barrera's commissions, thereby failing to provide complete and non-misleading information to Moore and violating his duty to disclose information necessary to rectify his misleading statements. Div. App. at 29-31; *David F. Bandimere*, 2015 SEC LEXIS 4472, at *40-41. This conduct violated the antifraud provisions of the securities laws, and is therefore

"especially serious and subject to the severest of sanctions." *Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (Dec. 12, 2013) *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). Placing his own financial interests above his client's also supports a finding of egregiousness. *See Ralph Calabro*, Securities Act Release No. 9798, 2015 WL 3439152, at *41 (May 29, 2015). And by acting as a broker without registering with the Commission or associating with a registered broker, Sellers evaded the Commission's standards with respect to the training, experience, and recordkeeping required of those acting in such an important capacity. *See* Div. App. at 34.

Sellers' misconduct appears to be limited to a fairly recent, though relatively short, period in 2012. *See* Div. App. at 13. But during that period, Sellers attempted to solicit investments from at least two different investors for several Vendetta-related entities, and he communicated and negotiated with Moore repeatedly. *Id.* at 14, 16-17, 33. His conduct was therefore somewhat recurrent. *Cf. id.* at 35 (finding that Sellers' violations "were not particularly repetitive or numerous").

*2. Scienter*

The district court found that Sellers' violations of the antifraud provisions were made with scienter. Div. App. at 31. Sellers admitted that he had no basis for telling Moore that his commission would be small. *Id.* at 16, 30. He also admitted that he read the PPM he provided to Moore, which contained a purported maximum for promotional expenses that the commissions ultimately exceeded by over $370,000. *Id.* at 15, 30-31. He was, "at the very least, . . . severe[ly] reckless[ ] in failing to know that [his] commission was a violation of the PPM to the detriment" of all of Vendetta's limited partners.[3] *Id.* at 31.

*3. Assurances against future violations, recognition of the wrongful nature of his conduct, and opportunities for future violations*

Although "[c]ourts have held that 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) (alteration in internal quotation omitted) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)). In this proceeding, Sellers did not oppose the Division's motion and has submitted nothing to rebut that inference. He has also not made any assurances against future violations or demonstrated that he understands the wrongful nature of his conduct. This mirrors his conduct in the district court proceeding, in which the court observed that he had not "expressed remorse or recognized [his] transgressions." Div. App. at 36.

The Division did not introduce any evidence regarding Sellers' past or current occupation. Instead, it points only to the district court's statement that Respondents had "shown

[3] Respondents' violations of the broker registration provision did not require a finding of scienter, and the district court did not make findings regarding their states of mind when violating Exchange Act Section 15(a). Div. App. at 31-34.

themselves capable of soliciting and negotiating with investors for millions of dollars in securities transactions." Div. Mot. at 7; Div. App. at 36. Without any additional insight into Sellers' occupational history, this factor does not weigh in favor of an industry bar.

*4. Other considerations*

The district court found that Respondents' misconduct caused investor losses exceeding $3 million, "a significant loss." Div. App. at 41. And despite the limited time period and absence of occupational evidence, an industry bar will "prevent [Sellers] from putting investors at further risk and serve as a deterrent to others from engaging in similar misconduct." *Montford & Co.*, Investment Advisers Act of 1940 Release No. 3829, 2014 WL 1744130, at *20 (May 2, 2014), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015). His misconduct was egregious, relatively recent, and committed with at least severe recklessness, further supporting the imposition of a bar. On balance, the public interest factors weigh in favor of an industry bar against Sellers.

**C. An Industry-Wide Bar Against Barrera, with the Right to Reapply in Five Years, is in the Public Interest**

*1. Egregiousness, recency, and recurrence*

Barrera argues in his motion for summary disposition that he "has never in his life sold a security" and "simply introduced a childhood friend (Mr. Sellers) to another friend (Mr. Moore) regarding a business opportunity." Resp. Mot. at 1. But the district court's reconsideration order forecloses this attempt to minimize his involvement. The court found that the "undisputed facts establish Barrera did more than simply introduce Moore to Sellers – he capitalized on his friendship with Moore to solicit and help close the investment deal between Lacova and Vendetta." Div. App. at 82, 85. It also found that his "conduct in withholding information about the structure and amount of his compensation, even after Moore asked him a direct question about it, amounts to an intentional breach of [his] duty" to disclose material facts to Moore. *Id.* at 86; *see David F. Bandimere*, 2015 SEC LEXIS 4472, at *40-41.

But Barrera is correct that his conduct was less egregious and recurrent than Sellers'. He was not an employee of Vendetta, and Moore was the only person he was actively involved in soliciting. Div. App. at 13-14, 33. Even the district court acknowledged that "it could be argued Barrera was not necessarily participating in securities transactions 'regularly,'" despite the fact that he was hired by Sellers to do so. *Id.* at 33. While Barrera arranged the initial meeting with Moore and continued to act as an occasional intermediary between Vendetta and Moore, Sellers appears to have done the bulk of the work required to secure Lacova's investment. *See id.* at 14, 33. An affidavit submitted by Sellers supports Barrera's claim that his role was comparatively limited. *See* Sellers Aff. ¶¶ 1-2. And unlike Sellers, Barrera did not make an affirmative misrepresentation about his commission; instead, he failed to correct Sellers' statement in the initial meeting and did not provide a direct answer to Moore's question after the meeting. Div. App. at 29 n.26, 85-86. I conclude that his actions, though relatively recent, were only moderately egregious and recurrent.

*2. Scienter*

Barrera represents that he had no knowledge of the securities industry or its regulations at the time he engaged in the conduct at issue. Resp. Mot. at 2. And I agree with Barrera's assertion that there is no evidence that he intentionally participated in the Ponzi scheme orchestrated by Helms and Kaelin. *See id.* But the district court still found that he acted with scienter – it concluded that he acted with a reckless disregard of his duty to disclose material facts to Moore, and that his withholding of information about his commission amounted to an intentional breach of that duty. Div. App. at 86. He remained silent when Sellers represented that their commissions would be small, even though he knew he would receive two to three percent of the $3,050,000 Moore invested. *Id.* at 16. And even if it is true that Barrera did not read the PPM, he acted with "severe recklessness in failing to know that [his] commission was a violation of the PPM to the detriment of all limited partners at Vendetta Partners." *Id.* at 31. The fact that he had no familiarity with securities regulation, and failed to read the PPM sent to Moore, supports rather than undercuts a finding of recklessness.

*3. Assurances against future violations, recognition of the wrongful nature of his conduct, and opportunities for future violations*

As with Sellers, the district court noted that Barrera did not express remorse or recognize his misconduct during the underlying proceeding. Div. App. at 36. In his motion for summary disposition, Barrera continues to insist that he "did not do anything wrong" and "just introduced a couple friends," though he does express remorse that his "introduction hurt these people." Resp. Mot. at 3. I conclude that Barrera has failed to adequately recognize the wrongful nature of his conduct. His assurances against future violations are also tepid, centering primarily around his insistence that he has no desire to return to the securities industry. *See id.* On the other hand, the likelihood that his occupation will present opportunities for future violations appears to be relatively low. Barrera asserts that his work for Sellers was an isolated deviation from a career focused on design, contracting, and music production. *Id.* at 1, 3-4. He attaches an affidavit in which a friend named Johnny Gehris corroborates this description of his employment history. Gehris Aff. ¶¶ 1-3. Though he alludes to a new business venture in which unnamed "business allies" are supporting him, his description does not necessitate the Division's conclusion the venture involves securities. Resp. Mot. at 3; Div. Opp. at 2.

*4. Other considerations*

Barrera's misconduct caused over $3 million in investor losses, and there is a significant need to deter others from reckless participation in an industry about which they are completely ignorant. Div. App. at 41. But his conduct was neither particularly egregious nor recurrent, and Barrera's background and professed intention suggest that he will have few opportunities for future violations. On the other hand, his willingness to participate in a securities offering with zero knowledge or experience of the industry presents a potential risk to future investors, as does his continued insistence that he did nothing wrong in connection with the investment at issue. Based on the balance of the public interest factors, I have concluded that an industry bar for a minimum of five years is appropriate.

## Order

It is ORDERED that the Division's motion for summary disposition against Deven Sellers and Roland Barrera is GRANTED IN PART and DENIED IN PART, and Roland Barrera's motion for summary disposition is DENIED.

It is FUTHER ORDERED that, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, Deven Sellers is BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, and 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.

It is FUTHER ORDERED that, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, Roland Barrera is BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, and 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, with the right to reapply in five years.

This initial decision shall become effective in accordance with and subject to the provisions of 17 C.F.R. § 201.360. Pursuant to 17 C.F.R. § 201.360, 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 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