INITIAL DECISION RELEASE NO. 967
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16734

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

In the Matter of GEORGE BUSSANICH, JR.	INITIAL DECISION OF DEFAULT February 29, 2016

APPEARANCES: Cynthia A. Matthews and Kevin P. McGrath for the Division of Enforcement, Securities and Exchange Commission

BEFORE: Cameron Elliot, Administrative Law Judge

Summary

This initial decision of default grants the motion for sanctions filed by the Division of Enforcement against Respondent George Bussanich, Jr., and permanently bars him 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 (collectively, industry bar).

Procedural Background

On August 10, 2015, the Securities and Exchange Commission issued an order instituting proceedings (OIP) against Bussanich pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 (Exchange Act). The OIP alleges that on August 1, 2014, the Superior Court of Essex County, New Jersey, entered a final judgment by consent (consent order), in the civil action brought by the New Jersey Bureau of Securities (NJBOS), entitled *Hoffman v. Bussanich*, No. ESX-C-277-13 (N.J. Super. Ct. Aug. 1, 2014) (civil action). The consent order permanently enjoined Bussanich from (1) violating the New Jersey Uniform Securities Law, including its anti-fraud provisions; (2) acting in the securities business in New Jersey as an agent, broker-dealer, investment adviser, or investment adviser representative; (3) issuing, offering for sale or selling, offering to purchase or purchasing, distributing, promoting, advertising, soliciting, negotiating, advancing the sale of and/or promoting securities, or advising regarding the sale of any securities in any manner to, from, or within New Jersey, except to buy or sell securities for their own accounts through registered broker-dealers; (4) engaging in the conduct set forth in the NJBOS complaint; and (5) controlling and acting as an officer and/or director of an issuer offering for sale or selling any security. OIP at 2.

Service of the OIP occurred on September 22, 2015, and Bussanich's Answer was due by October 12, 2015. *George Bussanich*, *Jr.*, Admin. Proc. Rulings Release No. 3230, 2015 SEC LEXIS 4249 (ALJ Oct. 15, 2015). Because Bussanich did not timely file an answer to the OIP, I ordered him to show cause why this proceeding should not be determined against him. *Id.* Bussanich did not timely respond to the order to show cause, and by order issued October 29, 2015, I found him in default and ordered the Division to file a motion for sanctions. *George Bussanich*, *Jr.*, Admin. Proc. Rulings Release No. 3268, 2015 SEC LEXIS 4448.

On December 2, 2015, the Division filed its motion for sanctions, attaching multiple exhibits, including: the certificate of formation for the Metropolitan Ambulatory Surgical Center LLC (MASC) (Ex. 7); the operating agreement for MASC (Ex. 8); promissory notes offered by MASC (Ex. 9); Financial Industry Regulatory Authority broker check records for Bussanich (Ex. 10); the consent order in the civil action (Ex. 11); the complaint in the civil action (Ex. 12); the indictment in *United States v. George Bussanich Sr.*, 15-cr-424 (D.N.J. Aug. 25, 2015) (Ex. 14); three complaints filed against Bussanich by Detective Matthew Tully of the New Jersey Attorney General's Division of Criminal Justice on September 1, 2015 (Ex. 15); and an additional complaint, filed by Tully against Bussanich on October 9, 2015 (Ex. 16). I admit these exhibits and, where appropriate, take official notice of them. *See* 17 C.F.R. § 201.323.

Findings of Fact

In 2013, the Attorney General of New Jersey, on behalf of NJBOS, filed the civil action against Bussanich, his father, George John Bussanich, Sr. (Bussanich, Sr.),[1] MASC, and several nominal defendants. Ex. 12 at 1-2. The complaint alleged that – from in or about March 2009 through in or about July 2013 – Bussanich, Bussanich, Sr., and MASC raised approximately $3,500,000 from the sale of unregistered MASC notes, and that neither Bussanich nor his father was registered with NJBOS to sell the MASC notes. *Id.* at 3. The complaint also alleged that the funds raised from the sale of MASC notes were used for the personal benefit of Bussanich, Sr., including purchases of homes and multiple luxury vehicles, as well as numerous disbursements of funds to Bussanich. *Id.* at 11-12.

In August 2014, all defendants agreed to resolve the issues in the civil action by entering into the consent order, the terms of which were then approved by a judge. Ex. 11 at 1-4, 33. The consent order contained numerous findings of fact and law,[2] including that, from in or about March 2009 to in or about July 2013, Bussanich, Bussanich, Sr., and MASC raised approximately $4,271,792.53 from the fraudulent offer and sale of MASC notes and investment contracts, and that those funds were misused for the personal benefit of Bussanich and Bussanich, Sr., among others. *Id.* at 4, 6, 8-12. The consent order also determined that from October 2006 through December 2011, Bussanich was registered as an agent of a broker-dealer,

[1] Bussanich, Sr., is referred to in many of the exhibits as George J. Bussanich, while his son is simply referred to as George Bussanich. *See*, *e.g.*, Ex. 8 at 17-18; Ex. 9 at 25, 44.

[2] The findings were made by the NJBOS bureau chief. Ex. 11 at 4. The defendants, including Bussanich, neither admitted nor denied the findings, but entered into the consent order while represented by counsel, and waived their rights to appeal, assert any defenses, or raise any challenge to the terms of the consent order. *Id.* at 32-34.

Kovack Securities, Inc. *Id.* at 4; *see also* Ex. 10 at 4. Bussanich was then permanently enjoined from acting in the securities business in New Jersey as an agent, a broker-dealer, an investment adviser, and an investment adviser representative. Ex. 11 at 4, 12-13. He was also ordered, jointly and severally with several other defendants, to pay $1,000,000 in civil monetary penalties and $4,074,095.06 in restitution. *Id.* at 13-14.

Conclusions of Law

Bussanich is in default for failing to file an answer or otherwise defend this proceeding. *See* OIP at 3; 17 C.F.R. §§ 201.155(a)(2), .220(f). Thus, I deem the OIP's allegations true and base my findings and conclusions on the record and facts officially noticed. *See* 17 C.F.R. §§ 201.155(a)(2), .323. The filings, 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.

The Division seeks a permanent industry bar against Bussanich. Mot. at 11-15. Section 15(b)(6) of the Exchange Act authorizes the Commission to sanction Bussanich if: (1) at the time of the alleged misconduct, he was associated or seeking to become associated with a broker or dealer; (2) he has been enjoined from any action, conduct, or practice specified in Exchange Act Section 15(b)(4)(C); and (3) the sanction is in the public interest. 15 U.S.C. §78*o*(b)(6)(A)(iii). The first requirement is met because during a substantial portion of the time he engaged in his misconduct, Bussanich was a registered representative and associated with Kovack, a registered broker-dealer. Ex. 10 at 4; Ex. 11 at 4. Specifically, Bussanich's misconduct took place from around March 2009 to July 2013, and he was associated with Kovack from October 2006 through December 2011. Ex 10 at 4; Ex. 11 at 4, 6. The second requirement is met because the consent judgment enjoined him from acting as an investment adviser and broker-dealer, conduct that falls within Exchange Act Section 15(b)(4)(C). Ex. 11 at 12; 15 U.S.C. §78*o*(b)(4)(C). Therefore, I will impose a sanction if it is in the public interest.

Sanction

The criteria to determine whether a 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 of 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*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *22 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010). 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. 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.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46 (Jan. 31, 2006); *Marshall E. Melton*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at *4-5 (July 25, 2003).

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 decision "should be grounded in specific findings regarding the protective interests to be served by barring the respondent and the risk of future misconduct." Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *8 (Mar. 7, 2014) (internal quotation marks omitted). Bussanich is in default, so my conclusions are based on the OIP's allegations—deemed true—and the uncontested record.[3] *See* 17 C.F.R. § 201.155(a). After engaging in the analysis mandated by *Ross Mandell*, I have determined that it is appropriate and in the public interest to bar Bussanich from participation in the securities industry to the fullest extent possible.

A. Background of Bussanich's Misconduct

Bussanich was born in 1979 and first became affiliated with a registered broker-dealer in 2004. Ex. 10 at 4; Ex. 15 at 1. From October 2006 through December 2011, he was registered as an agent of Kovack. Ex. 10 at 4; Ex. 11 at 4. He was terminated from Kovack on December 31, 2011, for failing to disclose an outside business activity. Ex. 11 at 4. MASC was formed in April 2007, and by July 2007 was wholly owned by Bussanich and Bussanich, Sr. Ex. 7 at 1; Ex. 8 at 204; Ex. 11 at 4. From around March 2009 to July 2013, Bussanich, Sr., was the chief executive officer, president, and member of MASC, and had full control over MASC's finances. Ex. 11 at 4. MASC was a holding company "for all of the managing of medical clinics" owned by Bussanich, Sr., and was never registered with NJBOS. *Id.* at 4-5. From March 2009 to July 2013, Bussanich, Bussanich, Sr., and MASC raised approximately $4,271,792.53 through the solicitation and sale of MASC promissory notes and "handshake" investment contracts to approximately thirty-one investors, including several of Bussanich's clients. *Id.* at 6-7. The MASC notes and investment contracts were not registered with NJBOS, and were neither "federally covered" nor exempt from registration. *Id.* at 7.

Bussanich and his father told investors that their funds would be used for cash flow, equipment and construction costs, day-to-day expenses, salaries, business expansion, and other business-related expenses. Ex. 11 at 7-8. However, investor funds were commingled with other funds and used by Bussanich, Sr., as his "personal slush fund" that funded, among other things, shopping, dining, airline travel, cash withdrawals totaling at least $853,117.71, mortgage payments, and a down payment for a home. *Id.* at 8-10. Bussanich also partook in the improper

[3] The uncontested record includes the consent order entered into by Bussanich, which I am permitted to consider in my public interest analysis. *See Nicholas S. Savva*, Exchange Act Release No. 72485, 2014 SEC LEXIS 2270, at *32-33 (June 26, 2014). In *Nicholas Rowe*, the Commission held that it was improper to rely on a state consent order in conducting a public interest analysis where the respondent appeared and challenged the conclusions of the consent order, and language within that consent order was held to permit him to do so. Exchange Act Release No. 75982, 2015 SEC LEXIS 3928, at *14-18 (Sept. 24, 2015) (relying on language in the consent order permitting respondent "to take contrary legal or factual positions in litigation or other legal proceedings in which the [state] is not a party"). By contrast, Bussanich has not appeared in this proceeding, and the language of the present consent order contains no language precluding the collateral effect of its findings.

use of investor funds. Investor funds were used to fund checks payable to Bussanich, checks payable to "Cash" which Bussanich then cashed, and a bank account purportedly for Bussanich's daughter which he used "like a personal account," and to purchase, among other things, a Mercedes, two Maseratis, a Range Rover, and a Ferrari for the use of Bussanich family members. *Id.* at 9-10.

B. Bussanich's misconduct was egregious and recurrent

Bussanich's use of investor funds for his own benefit, detailed above, was clearly egregious. So, too, was his conduct in soliciting investors for the MASC notes and investment contracts. Bussanich made numerous material omissions to investors, some of which were his Kovack clients. These omissions included the failure to disclose that: (1) the MASC notes were not registered with NJBOS nor exempt from state or federal regulation; (2) Bussanich, Sr., was not registered with NJBOS to sell securities; (3) Bussanich was not registered with NJBOS to sell the MASC notes; (4) investor funds would be commingled with other funds; and (5) the commingled investor funds would be used by the Bussanich family for their own personal use and benefit. Ex. 11 at 7, 10-11. As a reflection of the egregiousness of his conduct, Bussanich has been enjoined from violating the New Jersey state antifraud provisions. *Id.* at 12-13; *see Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (Dec. 12, 2013) (for a *Steadman* analysis, an antifraud injunction is considered especially serious and subject to the severest of sanctions); *Michael T. Studer*, Exchange Act Release No. 50411, 2004 SEC LEXIS 2135 (Sept. 20, 2004) ("the fact that a person has been enjoined from violating antifraud provisions has especially serious implications for the public interest"). Where a respondent has been enjoined from violating antifraud provisions of the securities laws, the Commission "typically" imposes a permanent bar. *Toby G. Scammell*, Advisers Act Release No. 3961, 2014 SEC LEXIS 4193, at *37 (Oct. 29, 2014). The egregiousness and degree of harm to investors is also demonstrated by the fact that Bussanich was held jointly and severally liable for over $4 million in restitution and $1 million in penalties. Ex. 11 at 13-14.

Bussanich's misconduct was also recurrent. He and his father sold the MASC notes and investment contracts to approximately thirty-one investors. Ex. 11 at 6. Furthermore, although Bussanich was terminated from association with Kovack at the end of December 2011 and therefore not affiliated with a registered broker-dealer after that, he continued to participate in the sale of MASC notes and investment contracts until July 2013. *Id.* at 4, 6, 11-12.

C. Scienter

Scienter is "a mental state embracing intent to deceive, manipulate, or defraud." *Aaron v. SEC*, 446 U.S. 680, 686 n.5 (1980). Extreme recklessness may satisfy this intent requirement. *SEC v. Steadman*, 967 F.2d 636, 641 (D.C. Cir. 1992). The nature and scope of Bussanich's misconduct necessitates a finding that he acted with scienter. For example, after his December 2011 termination from Kovack, Bussanich was not affiliated with a registered broker-dealer. Ex. 10 at 4, Ex. 11 at 4. At that point, he was not registered to sell securities. Ex. 11 at 11; *see* 15 U.S.C. § 78*o*(a)(1); N.J. Stat. Ann. § 49:3-56. Yet he did not disclose this to investors, and continued to sell MASC notes. Ex. 11 at 10-11, *see* Ex. 9 (MASC promissory notes dated in

2013 and signed by Bussanich). The failure to disclose such a material fact was either intentional or extremely reckless.

Furthermore, the consent order contains a finding that Bussanich violated the antifraud provisions of the New Jersey securities laws, specifically N.J. Stat. Ann. 49:3-52(b) and (c). Ex. 11 at 12. Those provisions parallel the language in Exchange Act Rule 10b-5(b) and (c). *Compare* N.J. Stat. Ann. § 49:3-52(b), (c), *with* 17 C.F.R. § 240.10b-5(b), (c). Like Rule 10b-5, the New Jersey provisions require a showing of scienter. *Granat v. Puglisi*, No. 08-cv-05204, 2010 WL 551438, at *3 (D.N.J. Feb. 16, 2010); *DeRobbio v. Harvest Cmtys. of Sioux City*, No. 01-cv-1120, 2002 U.S. Dist. LEXIS 26706, at *19-20 (D.N.J. Oct. 30, 2002). The consent order therefore establishes that Bussanich acted with scienter.

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

Bussanich has not offered assurances against future violations or communicated any recognition of his wrongful conduct. 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). Bussanich has not appeared in this proceeding and thus has offered nothing to rebut that inference.

Bussanich is currently the subject of multiple criminal actions, both in federal and New Jersey state court. *See* Exs. 14-16. One of these criminal actions charges Bussanich with violations of securities laws. *See* Ex. 15. It also appears that Bussanich has been charged with violating the terms of the consent order. Ex. 15 at 4 (charging him with "violating a court order dated August 1, 2014"); Ex. 11 at 33 (consent order, dated August 1, 2014). While the outcome of those actions has not been determined, they suggest the possibility that Bussanich has already committed additional violations, including of the consent order which forms the basis of this proceeding. Absent a bar, Bussanich would be able to participate in the securities industry, presenting a risk of future violative conduct harmful to investors.

Remedial Sanction

The balance of *Steadman* factors weighs in favor of a permanent industry bar against Bussanich, given his egregious and recurrent misconduct, high degree of scienter, and lack of assurances against wrongdoing. I have also considered Bussanich's "'current competence' and the 'degree of risk' he poses to public investors and the securities markets in each of the areas covered by the remedies." *Gregory Bartko*, Exchange Act Release No. 71666, 2014 SEC LEXIS 841, at *34 (Mar. 7, 2014) (quoting *John W. Lawton*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855, at *28 n.34 (Dec. 13, 2012), *called into question on other grounds by Koch v. SEC*, 793 F.3d 147 (D.C. Cir. 2015)). "The industry relies on the fairness and integrity of all persons associated with each of the professions covered by the collateral bar to forgo opportunities to defraud and abuse other market participants." *John W. Lawton*, 2012 SEC LEXIS 3855, at *43.

The extent, nature, and duration of Bussanich's misconduct demonstrate that he is incapable of such fairness and integrity in any capacity in the securities industry. An industry bar, as opposed to a more limited bar or suspension, "will prevent [Bussanich] from putting investors at further risk and serve as a deterrent to others from engaging in similar misconduct." *Montford & Co.*, Advisers Act Release No. 3829, 2014 SEC LEXIS 1529, at *86-87 (May 2, 2014), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015). Because the majority of Bussanich's misconduct occurred after the July 2010 effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act, there is no retroactivity issue. *See Koch v. SEC*, 793 F.3d 147, 157-58 (D.C. Cir. 2015).

Order

Accordingly, it is ORDERED that the Division's motion for sanctions against George Bussanich, Jr., is GRANTED, and that pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, George Bussanich, Jr., is permanently 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.

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.

Bussanich is again notified that he may move to set aside the default in this case. Pursuant to 17 C.F.R. § 201.155(b), a default may be set aside for good cause, in order to prevent injustice and on such conditions as may be appropriate. 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.

Cameron Elliot
Administrative Law Judge