INITIAL DECISION RELEASE NO. 1157
ADMINISTRATIVE PROCEEDING
FILE NO. 3-17751

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

In the Matter of	:	
	:	INITIAL DECISION
ROY DEKEL	:	July 28, 2017

APPEARANCES: Amy Jane Longo, Lynn M. Dean, and Matthew T. Montgomery for the Division of Enforcement, Securities and Exchange Commission

Marc Y. Lazo, Lisbeth Bosshart Merrill, and Charles K. Stec of Wilson Keadjian Browndorf, LLP, for Respondent Roy Dekel

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Roy Dekel from the securities industry. He was previously enjoined against violations of the antifraud provisions of the securities laws.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on December 27, 2016, pursuant to Section 203(f) of the Investment Advisers Act of 1940. The proceeding is a follow-on proceeding based on *SEC v. Diverse Financial Corp.*, No. 8:15-cv-1746 (C.D. Cal.), in which Dekel was enjoined, on consent, against violations of the antifraud provisions of the federal securities laws. The Division of Enforcement filed a motion for summary disposition, pursuant to 17 C.F.R. § 201.250(b), on March 22, 2017. Dekel filed an opposition, and the Division, a reply, on April 12, and 26, 2017, respectively.

This Initial Decision is based on the pleadings and Dekel's February 13, 2017, Answer to the OIP. There is no genuine issue with regard to any fact that is material to this proceeding. All material facts that concern the activities for which he was enjoined were decided against him in the civil case on which this proceeding is based. Any other facts in his pleadings have been

taken as true. All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

B. Allegations and Arguments of the Parties

The OIP alleges that Dekel was enjoined against violations of the antifraud provisions in *SEC v. Diverse Financial Corp*. The Division urges that he be barred from the securities industry. Dekel requests a remedial bar of no more than five to ten years and requests an evidentiary hearing to present evidence relevant to determining his degree of culpability in support of the lesser sanction.

C. Procedural Issues

1. Official Notice

Official notice pursuant to 17 C.F.R. § 201.323 is taken of the docket report and the court's orders in *SEC v. Diverse Financial Corp.*, and of Financial Industry Regulatory Authority, Inc. (FINRA), records as well. *See Joseph S. Amundsen*, Securities Exchange Act of 1934 Release No. 69406, 2013 SEC LEXIS 1148, at *1 n.1 (Apr. 18, 2013), *petition for review denied*, 575 F. App'x 1 (D.C. Cir. 2014).

2. Collateral Estoppel

It is well established that the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent, whether resolved by summary judgment, by consent, or after a trial. *See John Francis D'Acquisto*, Advisers Act Release No. 1696, 1998 SEC LEXIS 91, at *1-2 & n.1, *7 (Jan. 21, 1998) (injunction entered by summary judgment); *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at *10 (Feb. 4, 2008) (injunction entered by consent), *petition for review denied*, 561 F.3d 548 (6th Cir. 2009); *James E. Franklin*, Exchange Act Release No. 56649, 2007 SEC LEXIS 2420, at *11 & nn.13-14 (Oct. 12, 2007) (injunction entered after trial), *petition for review denied*, 285 F. App'x 761 (D.C. Cir. 2008); *Demitrios Julius Shiva*, Exchange Act Release No. 38389, 1997 SEC LEXIS 561, at *5-6 & nn.6-7 (Mar. 12, 1997); *see also Marshall E. Melton*, Advisers Act Release No. 2151, 2003 SEC LEXIS 1767, at *2-10, *22-30 (July 25, 2003). In proceedings based on injunctions entered by consent, the Commission considers, and does not permit the respondent to contest, the allegations of the injunctive complaint. *Marshall E. Melton*, 2003 SEC LEXIS 1767, at *26-27.

3. Summary Disposition

Dekel requests an evidentiary hearing to present evidence relevant to his degree of culpability as it relates to the public interest factors for determining the reasonableness of sanctions and because the Division's motion included new evidence, consisting of quotations from Dekel's webpage and from articles posted to the internet about Dekel, not considered by the District Court in *SEC v. Diverse Financial Corp*. However, Dekel is estopped from challenging his culpability for violating the antifraud provisions for which he was found liable in *SEC v.*

Diverse Financial Corp. Concerning the new evidence, Dekel does not dispute the authenticity of the webpage,[1] and the undersigned will not consider the other internet postings.

II. FINDINGS OF FACT

On December 8, 2016, Dekel was enjoined, on consent, in *SEC v. Diverse Financial Corp.*, from committing violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and of Section 17(a) of the Securities Act of 1933; he was ordered to pay a civil penalty of $455,994.78; he was also ordered to pay, jointly and severally with Diverse Financial Corporation, disgorgement of $2,717,758.20 plus prejudgment interest of $108,023.57. *SEC v. Diverse Fin. Corp.*, ECF No. 139, at 1-2.

From 2011 through 2015, Dekel owned 45% of Diverse Financial Corporation and was its chief executive officer. Ans. at 1. DF Capital Partners, LLC (DFCP), and Diverse Financial Investment Advisory Group (DFIAG), a California-registered investment adviser, were wholly-owned subsidiaries of Diverse Financial. *Id.* Dekel was associated with DFIAG from at least August 2013 through December 2014; he is not currently registered or associated with a registrant. Ans. at 1-2; Roy Arie Dekel investment adviser representative public disclosure report at 4, https://www.adviserinfo.sec.gov/IAPD/Support/ReportViewer.aspx?indvl_pk=6245879 (last visited July 25, 2017). DFIAG's registration was revoked, effective February 6, 2015. Ans. at 1-2; https://www.adviserinfo.sec.gov/IAPD/IAPDFirmSummary.aspx?ORG_PK=168965 (last visited July 25, 2017.

In his December 8, 2016, Consent in *SEC v. Diverse Financial Corp.*, Dekel affirmatively stated that "in any disciplinary proceeding before the SEC based on the entry of the injunction in this action, [he] understands that he shall not be permitted to contest the factual allegations of the complaint in this action." *SEC v. Diverse Fin. Corp.*, ECF No. 133 at 3. Further, he stated that he "understands and agrees to comply with . . . the Commission's policy 'not to permit a defendant . . . to consent to a judgment . . . that imposes a sanction while denying the allegations in the complaint or [OIP].'" *Id.* Finally, he agreed that he "will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis" and "hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint." *Id*. at 3-4.

Facts underlying *SEC v. Diverse Financial Corp.* are set forth in the Commission's complaint and are as follows: From May 2011 through November 2013, Dekel, Diverse Financial, and another individual raised approximately $3.29 million from sixteen investors by offering and selling notes issued by DFCP. Dekel had final decision-making authority over DFCP and the offering materials. DFCP purported to use investor proceeds exclusively to invest in life insurance premium finance lending operations or short term cash type investments such as

[1] Both parties attached the webpage to their filings. *See* Mot. for Summ. Disposition at Decl. of Amy Jane Longo, Ex. 15 (as of Mar. 14, 2017); Opp. at Decl. of Roy Dekel, Ex. 2 (as of Apr. 12, 2017).

money market accounts. Instead, Dekel and Diverse Financial misappropriated 100% of investors' monies, using them, *inter alia*, for salaries, including Dekel's, credit card bills, attorneys' fees related to conduct that predated DFCP, and Ponzi-like payments to certain investors. The diverted investor proceeds were not repaid. *SEC v. Diverse Fin. Corp.*, ECF No. 1 at 5-6, 9.

Dekel has "disengage[d] from financial planning, investment and insurance businesses" and the "sole business operation" in which he is employed is "SetSchedule, LLC"; its "sole business model is to offer internet marketing and advertising services to real estate agents and brokers, powered by software that connects such real estate professionals to active home buyers and sellers." Opp., Decl. of Roy Dekel ¶¶ 3-4. He describes himself on his personal webpage as a "Real Estate & Investment Professional" and "a venture capitalist [who] has invested in multiple markets including the finance [and other industries] and [who] has served in multiple professional roles such as the Director of Business Development, President, Co-Founder, CEO, and Partner in his portfolio companies." *Id.*, Ex. 2 at 1-2 of 5. The webpage does not mention Diverse Financial by name.

III. CONCLUSIONS OF LAW

Dekel has been enjoined "from engaging in or continuing any conduct or practice in connection with any such activity" as an investment adviser within the meaning of Sections 203(e)(4) and 203(f) of the Advisers Act.

IV. SANCTION

A collateral bar will be ordered.

A. Sanction Considerations

The Commission determines sanctions pursuant to a public interest standard. *See* 15 U.S.C. § 80b-3(f). The Commission considers factors including:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)), *aff'd on other grounds*, 450 U.S. 91 (1981). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. *Marshall E. Melton*, 2003 SEC LEXIS 1767, at *5. Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. *Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46 (Jan. 31, 2006). The public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business.

See Vladimir Boris Bugarski, Exchange Act Release No. 66842, 2012 SEC LEXIS 1267, at *18 n.26 (Apr. 20, 2012); *Richard C. Spangler, Inc.*, Exchange Act Release No. 12104, 1976 SEC LEXIS 2418, at *34 (Feb. 12, 1976).

B. Sanction

Dekel argues that the sanction requested by the Division – a bar – is too harsh, while suggesting a similar sanction – a five or ten year bar. Pointing to allegations in the Commission's complaint in *SEC v. Diverse Financial Corp*., he argues that others, not he, directly made statements to investors, that he was unaware of improprieties before December 2013, and, thus, that he had a minimal degree of scienter. Nonetheless, by virtue of being found liable for violating Exchange Act Section 10(b) and Rule 10b-5 and Securities Act Section 17(a)(1), Dekel's misconduct was committed with scienter, not negligence. *Aaron v. SEC*, 446 U.S. 680, 695-97 (1980); *SEC v. Steadman*, 967 F.2d 636, 641 & n.3 (D.C. Cir. 1992) (Scienter is required to establish violations of Exchange Act Section 10(b) and Rule 10b-5 and Securities Act Section 17(a)(1)). As described in the Findings of Fact, Dekel's conduct was egregious and recurrent over a period of three years, and involved a degree of scienter. Dekel has made assurances against future violations by withdrawing from the investment advisory business but still describes himself on his webpage as an "investment professional." His previous occupation, if he were allowed to continue it in the future, would present opportunities for future violations. Consistent with vigorous defense of the charges, he has minimized the wrongful nature of his conduct that was the subject of *SEC v. Diverse Financial Corp*. Absent a bar, he could participate in the securities industry. The violations are relatively recent. The $2,717,758.20 of ill-gotten gains that he was ordered to disgorge is a measure of the direct harm to the marketplace. Further, as the Commission has often emphasized, the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. *See Christopher A. Lowry*, Investment Company Act of 1940 Release No. 2052, 2002 SEC LEXIS 2346, at *20 (Aug. 30, 2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003); *Arthur Lipper Corp.*, Exchange Act Release No. 11773, 1975 SEC LEXIS 527, at *52 (Oct. 24, 1975), *petition for review granted in part on other grounds*, 547 F.2d. 171 (2d Cir. 1976). Violations involving dishonesty weigh in favor of a bar, and because of the Commission's obligation to maintain honest securities markets, an industry-wide bar is appropriate.

The Commission considers a fraud to be especially serious and to subject a respondent to the severest of sanctions. *Marshall E. Melton*, 2003 SEC LEXIS 1767, at *29-30. Indeed, from 1995 to the present, there have been over fifty litigated follow-on proceedings based on antifraud injunctions or convictions in which the Commission issued opinions, and all of the respondents were barred[2] – at least fifty unqualified bars and three bars with the right to reapply after five

[2] In the cases authorized before the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which authorized collateral bars, the Commission imposed industry-specific bars, such as a bar from association with an investment adviser on a respondent who had been associated with an investment adviser at the time of his violation.

years.[3] Further, in every such case that followed the statutory provision of collateral bars, the Commission imposed a collateral bar rather than an industry specific bar, reasoning that the antifraud provisions of the securities laws apply broadly to all securities-related professionals and violations demonstrate unfitness for future participation in the securities industry, even if the disqualifying conduct is not related to the professional capacity in which the respondent was acting when he or she engaged in the misconduct underlying the proceeding. *See John W. Lawton*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855, at *42-43 (Dec. 13, 2012), *vacated in part on other grounds*, Advisers Act Release No. 4402, 2016 SEC LEXIS 1926 (May 27, 2016). The time period – from May 2011 through November 2013 – of Dekel's violative conduct does not run afoul of the court's ruling in *Bartko v. SEC*, 845 F.3d 1217, 1224 (D.C. Cir. 2017), that a collateral bar cannot be imposed when the violative conduct on which a follow-on proceeding was based ended before the July 22, 2010, effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

V. ORDER

IT IS ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, ROY DEKEL IS BARRED from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 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 of the Commission's Rules of Practice, 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 a 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 occur, the Initial Decision shall not become final as to that party.

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Carol Fox Foelak
Administrative Law Judge

[3] Those three were *Richard J. Puccio*, Exchange Act Release No. 37849, 1996 SEC LEXIS 2987 (Oct. 22, 1996), *Martin B. Sloate*, Exchange Act Release No. 38373, 1997 SEC LEXIS 524 (Mar. 7, 1997), and *Robert Radano*, Advisers Act Release No. 2750, 2008 SEC LEXIS 1504 (June 30, 2008). The Commission's opinions do not make clear the factors that distinguished these cases from those in which unqualified bars were imposed, but there is little difference between a "bar" and a "bar with the right to reapply in five years."