Initial Decision Release No. 1248
Administrative Proceeding
File No. 3-18126

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

In the Matter of

Gerardo E. Reyes

Initial Decision
April 5, 2018

Appearances: Andrew O. Schiff for the Division of Enforcement, Securities and Exchange Commission

Gerardo E. Reyes, *pro se*

Before: Brenda P. Murray, Chief Administrative Law Judge

Procedural Background

On August 22, 2017, the Securities and Exchange Commission issued an order instituting proceedings (OIP) against Gerardo E. Reyes pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940. The OIP alleges that on March 29, 2017, Reyes pleaded guilty to two counts of wire fraud in *United States v. Reyes*, No. 1:16-cr-20963 (S.D. Fla. June 27, 2017), based on fraudulent conduct connected with securities transactions. OIP at 2.

On October 13, 2017, Reyes acknowledged receipt of the OIP and waived service. *Gerardo E. Reyes*, Admin. Proc. Rulings Release No. 5220, 2017 SEC LEXIS 3537 (ALJ Nov. 6, 2017). Reyes did not file an answer by the deadline, respond to a show cause order, or attend the prehearing conference I held on November 27, 2017. However, on November 28, 2017, Reyes emailed the Division of Enforcement and my office, stating that he tried but was unable to participate in the prehearing conference. His email also discussed, among other things, the conduct for which he was convicted, his largely unblemished career in the securities industry, his desire to make his victim whole, and his current employment outside the securities industry. I

caused his email to be filed with the Commission's Office of the Secretary. *Gerardo E. Reyes*, Admin. Proc. Rulings Release No. 5245, 2017 SEC LEXIS 3733, at *2 n.2 (ALJ Nov. 30, 2017). Because the matters Reyes discussed are relevant to the findings I must make in this proceeding, I deem the email to be his answer to the OIP.

I held a second prehearing conference on December 4, 2017, which Reyes and the Division attended. Reyes reiterated many of the points he made in his email, and I gave him until December 18, 2017, to decide whether he wanted to settle the case or proceed on summary disposition. Prehr'g Tr. 31-32; *Gerardo E. Reyes*, Admin. Proc. Rulings Release No. 5366, 2017 SEC LEXIS 4037 (ALJ Dec. 12, 2017). Neither the Division nor my office heard from Reyes, so I directed the Division to file a motion for summary disposition, which it did on January 17, 2018. *Gerardo E. Reyes*, Admin. Proc. Rulings Release No. 5415, 2017 SEC LEXIS 4176 (ALJ Dec. 21, 2017). Reyes did not file an opposition.

The Division's motion is supported by four exhibits: the indictment against Reyes (Ex. 1), Reyes's factual proffer (Ex. 2), the plea hearing transcript (Ex. 3), and the district court's final judgment (Ex. 4). The Division asks for full associational broker-dealer and investment adviser bars and a penny stock bar against Reyes.

I admit into evidence the exhibits attached to the motion and take official notice of the other portions of the record in the criminal case. 17 C.F.R. §§ 201.111(c), .323. I also take official notice of the BrokerCheck report for Reyes available on the FINRA website, as well as the BrokerCheck report and the official records of the Commission for the investment adviser New England Securities, with whom Reyes was affiliated for a time. FINRA, *BrokerCheck Report Gerardo Enrique Reyes* CRD# 4024452, https://brokercheck.finra.org/individual/summary/4024452.pdf (last visited Apr. 2, 2018) (Reyes BrokerCheck Report); 17 C.F.R. § 201.323; *see Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 WL 1683914, at *1 n.1 (Apr. 18, 2013), *pet. denied*, 575 F. App'x 1 (D.C. Cir. 2014). I apply preponderance of the evidence as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981). The findings and conclusions herein are based on the entire record. I have considered and rejected all arguments and proposed findings and conclusions inconsistent with this initial decision.

Summary Disposition Standard

Rule 250(b) governs summary disposition in cases designated by the Commission as 75-day proceedings. *See* 17 C.F.R. § 201.250(b). Rule 250(b) specifies that a motion for summary disposition may be granted if "there is no

genuine issue with regard to any material fact" and "the movant is entitled to summary disposition as a matter of law." *Id.* A motion for summary disposition is generally proper in "follow-on" proceedings like this one, where the administrative proceeding is based on a criminal conviction or civil injunction because relitigation of "the factual findings or the legal conclusions" of the underlying proceeding is precluded. *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *8, 10 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010).

Findings of Fact

Reyes was associated with a Miami, Florida, office of Allstate Financial Services, LLC, a registered broker-dealer, from October 1999 to April 2011. Reyes BrokerCheck Report. He was associated with a Doral, Florida, office of New England Securities, which at the time was a registered broker-dealer and investment adviser, from June 2011 to October 2012. *Id.*; FINRA, *BrokerCheck Report New England Securities* CRD# 615, at 2, https://files.brokercheck.finra.org/firm/firm_615.pdf (last visited Apr. 2, 2018) (broker-dealer registration withdrawn or terminated in January 2015); SEC Investment Adviser Public Disclosure, *New England Securities Corporation*, https://www.adviserinfo.sec.gov/IAPD/IAPDFirmSummary.aspx?ORG_PK=615 (last visited Apr. 2, 2018) (investment adviser registration terminated in February 2015).

In or around December 2003, Reyes started his own investment company, Gerardo E. Reyes & Associates, in Miami, Florida. Ex. 2 at 1. In April 2005, he asked one of his clients from Allstate to join an investment club through his own company with investments in real estate holdings. *Id.* The client joined and made some profitable investments. *Id.* Around May 2008, Reyes sent a letter to her saying that her investments were in danger of losing value and that she should move her money to United States treasury bonds. *Id.* In August 2008, Reyes sent her another communication stating that she had lost over nine percent of the amount she had invested and should transfer the remaining $156,524 into bonds before losing more. *Id.*

In October 2008 and September 2009, Reyes informed his client that he had invested most of her money in two treasury bonds, and he provided her CUSIP numbers identifying the two bonds. *Id.* at 2. However, unbeknownst to the investor, the CUSIP numbers were invalid and the bonds had never been purchased. *Id.*

In or around November 2011, Reyes's client requested early termination and distribution of the funds. *Id.* Her money had already been lost, but to

conceal that fact from her, Reyes provided her with false paperwork stating that the distribution had been approved and listing the total amount of money that she would receive. *Id.* In an effort to further the fraud, on or about June 5, 2012, Reyes sent $7,163.52, which was purported to be part of the early distribution, in a wire transfer to the investor's bank account. *Id.* Reyes sent no further payments. *Id.* Reyes did not respond to her phone calls inquiring about the remaining payments. *Id.* On January 20, 2013, she emailed Reyes about the matter, and Reyes replied by stating that he was in South America, but that everything was fine with her money, she had a personal guarantee from him, and he would have one of his associates look into the matter. *Id.* But the investor still did not receive any further payments, and Reyes stopped responding to her emails. *Id.*

In an interview with law enforcement in January 2016, Reyes admitted that he created the forms he provided to his client to cover up the fact that her money had been used to make bad investments and was lost. *Id.* at 3. He made the forms to give himself more time to come up with the money to pay her back, but he was never able to do so. *Id.*

At his plea hearing on March 29, 2017, Reyes agreed to the facts in the proffer and pleaded guilty to the two counts of wire fraud with which he had been charged. Ex. 3 at 12. He was sentenced to a term of probation of four years and ordered to pay $129,273 in restitution. Ex. 4 at 2, 4.

Legal Conclusions

Exchange Act Section 15(b)(6)(A) and Advisers Act Section 203(f) empower the Commission to bar a person from participating in the securities industry if: (1) the person was associated with a broker or dealer or investment adviser at the time of his misconduct; (2) the person was convicted, within ten years of the commencement of this proceeding, of one of certain specified offenses, including wire fraud, 18 U.S.C. § 1343; and (3) the sanction is in the public interest. 15 U.S.C. §§ 78*o*(b)(4)(B)(iv), (6)(A)(ii), 80b-3(e)(2)(D), (f). On the same basis, the Exchange Act authorizes a penny stock bar. 15 U.S.C. § 78*o*(b)(6)(A).

Reyes was convicted of wire fraud on March 29, 2017, which was within ten years of the commencement of these proceedings. Ex. 3 at 12; 15 U.S.C. § 78*o*(b)(6)(A)(ii), 80b-3(e)(2)(D); *see Joseph Contorinis*, Exchange Act Release No. 72031, 2014 WL 1665995, at *3 (Apr. 25, 2014). The evidence further shows that at the time of his misconduct Reyes was associated with a broker-dealer and investment adviser and that a permanent industry bar is in the public interest.

1. Associational Status

Reyes was associated with a broker-dealer—first Allstate Financial and then New England Securities—from October 1999 to October 2012, which covers the entire period of misconduct charged in the OIP. Reyes BrokerCheck Report; OIP at 2. And although Reyes was only associated with New England Securities, a registered investment adviser, from June 2011 to October 2012, a significant portion of his misconduct occurred during that period. In particular, in June 2012 in "an effort to further the fraud," Reyes wired to his client $7,163.52 purported to be part of her early distribution. *Id.* at 2. That specific wire transfer served as the basis for the first of Reyes's convictions for wire fraud. Ex. 1 at 4. Therefore, I find that Reyes was associated with both a broker-dealer and an investment adviser at the time of his misconduct.[1]

2. Public Interest Analysis

The factors used to guide the public interest determination of whether a bar is appropriate are: (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). The Commission also considers the harm caused to investors and the deterrent effect of sanctions. *See Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 WL 231642, at *8 & n.46 (Jan. 31, 2006); *Marshall E. Melton*, Advisers Act Release No. 2151, 2003 WL 21729839, at *2 (July 25, 2003). Each case should be reviewed "on its own facts" to determine the respondent's fitness to participate in the relevant industry capacities before imposing a bar. *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 (Mar. 7,

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[1] Even if I were to find that Reyes was not associated with an investment adviser at the time of his misconduct, the full associational bar I impose under Exchange Act Section 15(b) bars him from any future association with an investment adviser anyway. Because a substantial portion of Reyes's misconduct occurred after July 22, 2010, the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376, imposing a full associational bar is not impermissibly retroactive. *See Bartko v. SEC*, 845 F.3d 1217, 1222-23 (D.C. Cir. 2017) (holding that the imposition of a full associational bar based on conduct predating Dodd-Frank is impermissibly retroactive).

2014) (quoting *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005)), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 WL 3030883 (May 26, 2016).

Reyes's conduct was egregious and recurrent. He repeatedly lied to his client about the status of her investments and failed to disclose to her that he had lost her money in bad investments. Instead, he first advised her to invest her money in treasury bonds, to which she agreed, but then Reyes never actually followed through. Ex. 2 at 2. Later he created fake CUSIP numbers for bonds that did not exist. *Id.* Reyes led her on for several years in this fashion; he created fake documentation of an early distribution she requested and wired one payment to her, but then he refused to answer her calls. *Id.* In his final communication with his client in January 2013, Reyes lied to her, telling her that everything was fine even though he had lost her money. *Id.* at 2-3.[2] Reyes did all this despite having a fiduciary duty to his client. His conviction and restitution obligation are further evidence of the egregiousness of his conduct.

In his email to my office, Reyes states that he was employed in the financial services industry for fourteen years and served between 550 and 600 customers and that this incident was the only complaint against him. Answer at 2; *see* Prehr'g Tr. 29. He refers to his actions as a "single lie" that had catastrophic consequences. Answer at 2. Accepting Reyes's statement as true—as is appropriate on summary disposition—I still find that his largely unblemished career is not enough of a mitigating factor to warrant a lesser sanction. *See Jay T. Comeaux*, Securities Act Release No. 9633, 2014 WL 4160054, at *2 (Aug. 21, 2014) (the facts on summary disposition must be viewed in the light most favorable to the nonmoving party). Although Reyes defrauded only one client, the Commission considers fraudulent conduct to be "especially serious and subject to the severest of sanctions." *Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *6 (Dec. 12, 2013) (quoting *Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 WL 1377357, at *5 (Apr. 20, 2012)), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). And the Commission has repeatedly held that, "absent 'extraordinary mitigating circumstances,' an individual who has been criminally convicted in connection with activities related to the purchase or sale of securities cannot

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[2] Although the OIP did not charge Reyes with conduct occurring after June 2012, his later misdeeds may still be considered in assessing sanctions. *Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 WL 121451, at *5 n.21 (Jan. 14, 2011). Moreover, Reyes's email to his client was part of the same course of misconduct as that alleged in the OIP.

be permitted to remain in the securities industry." *Jose P. Zollino*, Exchange Act Release No. 55107, 2007 WL 98919, at *6 (Jan. 16, 2007) (quoting *Frederick W. Wall*, Exchange Act Release No. 52467, 2005 WL 2291407, at *4 (Sept. 19, 2005)). Moreover, although Reyes's fraud was directed toward only one client, it lasted several years. Reyes had abundant opportunity to tell the client what really happened to her money, but instead, from late 2008 until early 2013, he engaged in deceptive and fraudulent behavior to conceal the truth from her.

Reyes also acted with scienter. Wire fraud, to which Reyes pleaded guilty, requires "a scheme or artifice to defraud." 18 U.S.C. § 1343. Reyes admitted that he fabricated the CUSIP numbers for the bonds and the early distribution paperwork in order to cover up his loss of his client's money in bad investments and to give himself more time to come up with funds to pay her back. Ex. 2 at 3. Reyes's email to his client in January 2013, in which he assured her that everything was all right and said that one of his associates would look into the matter, appears to be of the same flavor; at the very least, Reyes was again covering for himself and hoping to buy more time. *See id.* at 2. Indeed, Reyes admits in his answer that he attempted to hide the facts from his client and hoped to later pay her back from his funds, which is a clear demonstration of his scienter. Answer at 2.

On the other hand, Reyes has largely accepted responsibility for his actions. He pleaded guilty and accepts the consequences incurred. Prehr'g Tr. 17. Even though he blames his former wife for some of the conduct for which he was convicted, he also acknowledges that he is guilty because he was a principal at his investment company and failed in his fiduciary duty to his client. Prehr'g Tr. 23-24. He admits that "one customer done wrong is wrong and I understand that." Prehr'g Tr. 29. He intends to restore his client's financial losses, and believes it is the right thing to do. Answer at 2; Prehr'g Tr. 28. Thus, the fifth *Steadman* factor, recognition of wrongful conduct, tips in Reyes's favor.

The fourth and sixth public interest factors, the sincerity of Reyes's assurances against future violations and his future opportunities for such violations, cut both ways. Reyes claims he is not currently involved in the financial services industry and that he has no intent to return. Answer at 2; Prehr'g Tr. 28. He states that he is self-employed and develops mobile applications for businesses to use in marketing their services. Answer at 2; Prehr'g Tr. 28-29. But while I am inclined to judge Reyes's assurances against future violations as sincere, they are not sufficient to persuade me that he will not reenter the industry and be faced with the opportunity for further violations. Despite his current plans, circumstances could lead him back to the securities business. *See Thomas J. Donovan*, Exchange Act

Release No. 52883, 2005 WL 3299159, at *5 (Dec. 5, 2005) (noting that, where respondent "has significant securities experience," he could "consider returning to the industry if permitted to do so"); *SEC v. Youmans,* 729 F.2d 413, 415-16 (6th Cir. 1984) (recognizing that "change of occupation, without more," does not preclude injunctive relief because the enjoined individual "may change jobs at any time"). Moreover, Reyes has not been entirely responsive in this proceeding. He did not answer initially or respond to my show cause order. Although I gave him two weeks to consider settlement and return with an answer, he submitted nothing by the deadline; nor did he respond to the Division's summary disposition motion. Such behavior does not give me confidence in his assurances about his future plans. "[T]he degree of intentional wrongdoing evident in a defendant's past conduct" is an "important factor" in evaluating the likelihood of future violations. *Aaron v. SEC*, 446 U.S. 680, 701 (1980). If Reyes does return to the securities industry, "the existence of a violation raises an inference that it will be repeated." *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *6 n.50 (July 26, 2013) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)). For these reasons, I cannot be assured that Reyes will remain out of the industry and conduct himself lawfully without the imposition of a bar. And if Reyes's "promise to remain out of the securities industry is sincere, a bar imposes no substantial burden on him while prophylactically protecting the investing public." *Korem*, 2013 WL 3864511, at *6.

I cannot say that there are no mitigating factors in this case. Reyes has accepted responsibility for his actions, and I believe him when he says that he has no current plans to reenter the securities industry. I have sympathy for the effect his criminal conviction may have on his military service record and for his loss of civil rights. *See* Prehr'g Tr. 28-30. And I see many cases where the fraud that occurred affected a great many more people and involved larger sums of money. But fraud is fraud and a conviction is a conviction. Reyes engaged repeatedly in illegal behavior with full knowledge of what he was doing. The goal is to "prevent [him] 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 WL 1744130, at *20 (May 2, 2014), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015); *see, e.g.*, *Guy P. Riordan*, Securities Act Release No. 9085, 2009 WL 4731397, at *19 & n.107 (Dec. 11, 2009) (collecting cases), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010). In view of the fact that the statutory prerequisites have been met and in light of my analysis of the public interest factors, I impose full associational and penny stock bars against Reyes.

Order

Under Commission Rule of Practice 250(b), I GRANT the Division of Enforcement's motion for summary disposition and ORDER, pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, that Gerardo E. Reyes is BARRED from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

I FURTHER ORDER that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Gerardo E. Reyes is BARRED from participating in an offering of penny stock, including acting as a 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 Commission Rule of Practice 360, 17 C.F.R. § 201.360. Pursuant to that rule, a party may file a petition for review of this initial decision within twenty-one days after service of the initial decision. A party may also file a motion to correct a manifest error of fact within ten days of the initial decision, pursuant to Rule 111, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then a party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact.

The initial decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct a manifest error of fact or the Commission determines on its own initiative to review the initial decision as to a party. If any of these events occurs, the initial decision shall not become final as to that party.

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Brenda P. Murray
Chief Administrative Law Judge