

INITIAL DECISION RELEASE NO. 1258  
ADMINISTRATIVE PROCEEDING  
FILE NO. 3-18288

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

---

In the Matter of :  
 :  
LAWRENCE E. PENN, III : INITIAL DECISION  
 : June 20, 2018

---

APPEARANCES: Howard Fischer, Thomas P. Smith, Karen E. Willenken, and  
Katherine Bromberg for the Division of Enforcement,  
Securities and Exchange Commission

Respondent Lawrence E. Penn, III, *pro se*

BEFORE: Carol Fox Foelak, Administrative Law Judge

## SUMMARY

This Initial Decision bars Lawrence E. Penn, III, from the securities industry. Penn was previously enjoined against violating the antifraud provisions of the federal securities laws and convicted of grand larceny and falsifying business records under New York state law.

## I. INTRODUCTION

### A. Procedural Background

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on November 20, 2017, pursuant to Section 203(f) of the Investment Advisers Act of 1940. The proceeding is a follow-on proceeding based on Penn's, injunction against violating the antifraud provisions of the federal securities laws in *SEC v. Penn*, No. 1:14-cv-0581 (S.D.N.Y. Aug. 22, 2017), and conviction of grand larceny and falsifying business records in violation of New York State law in *People v. Penn*, No. 00073-14 (N.Y. Sup. Ct. Apr. 20, 2015). The Division of Enforcement filed a motion for summary disposition on January 10, 2018, pursuant to 17 C.F.R. § 201.250(b), Penn filed an opposition on February 26, 2018, and the Division, a reply, on March 5, 2018.

This Initial Decision is based on the pleadings and Penn's 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 Penn was enjoined and convicted were decided against him in the civil and criminal cases on which this proceeding is based. 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 Penn was enjoined against violating the antifraud provisions of the federal securities laws in *SEC v. Penn* and convicted of grand larceny and falsifying business records in violation of New York State law in *People v. Penn*. The Division urges that he be barred from the securities industry. Penn requests that the bar be denied and that this proceeding be stayed pending the disposition of appeals in *SEC v. Penn* and *People v. Penn*. He also raises affirmative defenses such as unclean hands, lack of personal jurisdiction,<sup>1</sup> and unconstitutional actions. He says that the Division's "entire basis for this summary disposition and the summary judgment in [*SEC v. Penn*] is based on the fruit of a poisonous and unlawful indictment and conviction engineered in concert with" New York's Manhattan District Attorney (MDA). Opp. at 2. Among other things, he argues that the indictment, with no basis in law, was used to justify an arrest warrant and excess bail, resulting in a loss of liberty in violation of due process guaranteed by the U.S. and New York State constitutions, and the fourteen month detention<sup>2</sup> coerced him into a guilty plea. Opp. at 8-9.

## **C. Procedural Issues**

The issues in this proceeding concern Penn, not the Commission, and thus his allegation of misconduct by Commission staff in *SEC v. Penn* and *People v. Penn* should have been brought before the courts in which those cases were heard. *Harold F. Harris*, Securities Exchange Act of 1934 Release No. 53122 A, 2006 SEC LEXIS 68, at \*23 (Jan. 13, 2006). "Moreover, the doctrine of unclean hands may not generally be invoked against a government agency 'which is attempting to enforce a congressional mandate in the public interest.'" *Id.* (footnote omitted).

### **1. Official Notice**

Official notice pursuant to 17 C.F.R. § 201.323 is taken of the Commission's public official records and of the docket reports and courts' orders in *SEC v. Penn* and *People v. Penn*, and from Financial Industry Regulatory Authority, Inc. (FINRA), records as well. *See Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at \*1 n.1 (Apr. 18, 2013), *pet. denied*, 575 F. App'x 1 (D.C. Cir. 2014). A number of these documents are attached to the parties' filings.

### **2. Collateral Estoppel**

Penn essentially argues that he was wrongfully convicted in *People v. Penn* in violation of New York State law and that *SEC v. Penn* is tainted as well. However, it is well established that the Commission does not permit criminal convictions to be collaterally attacked in its administrative proceedings. *See Ira William Scott*, Advisers Act Release No. 1752, 1998 SEC LEXIS 1957, at \*8-

---

<sup>1</sup> Penn lists a lack of personal jurisdiction as an affirmative defense in his Answer. Ans. at 4. It is not clear what he means by this, and he did not address this topic at all in his opposition to the motion for summary disposition or at the December 18, 2017, prehearing conference.

<sup>2</sup> Penn advises that he was held at the Federal Bureau of Prison's Metropolitan Correctional Center in Manhattan and the Riker's Island facility operated by the New York City Department of Correction. Opp. at 8-9.

9 (Sept. 15, 1998); *William F. Lincoln*, Exchange Act Release No. 39629, 1998 SEC LEXIS 193, at \*7-8 (Feb. 12, 1998). Nor does the Commission permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent, whether resolved by consent, by summary judgment, or after a trial. See *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at \*10 (Feb. 4, 2008) (injunction entered by consent), *pet. denied*, 561 F.3d 548 (6th Cir. 2009); *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); *James E. Franklin*, Exchange Act Release No. 56649, 2007 SEC LEXIS 2420, at \*11 & nn.13-14 (Oct. 12, 2007) (injunction entered after trial), *pet. 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*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at \*2-10, 22-30 (July 25, 2003).

Nor does the pendency of an appeal preclude the Commission from action based on a conviction. See *Joseph P. Galluzzi*, Exchange Act Release No. 46405, 2002 SEC LEXIS 3423, at \*10 n.21 (Aug. 23, 2002); *Charles Phillip Elliott*, Exchange Act Release No. 31202, 1992 SEC LEXIS 2334, at \*11 (Sept. 17, 1992), *pet. denied*, 36 F.3d 86 (11th Cir. 1994). If Penn is successful in overturning his conviction and injunction, he can request the Commission to vacate any sanctions ordered in this proceeding (or to dismiss the proceeding, if it is still pending).<sup>3</sup>

## II. FINDINGS OF FACT

On April 20, 2015, Penn was convicted, on his March 16, 2015, plea of guilty, of one count of Grand Larceny in the First Degree and one count of Falsifying Business Records in the First Degree, in violation of New York Penal Law Sections 155.42 and 175.10 in *People v. Penn*. Div. Exs. 2, 16.<sup>4</sup> He was sentenced to two to six years of imprisonment and ordered to pay restitution of approximately \$8.3 million. Div. Ex. 2. Penn moved to vacate the judgment on the grounds of ineffective assistance of counsel, but the trial court denied his motion in a Decision and Order dated

---

<sup>3</sup> See *Jilaine H. Bauer, Esq.*, Securities Act of 1933 Release No. 9464, 2013 SEC LEXIS 3132 (Oct. 8, 2013) (dismissing follow-on administrative proceeding after court of appeals, while petition for review was pending before Commission, reversed and remanded district court's judgment that was basis for OIP); *Richard L. Goble*, Exchange Act Release No. 68651, 2013 SEC LEXIS 129 (Jan. 14, 2013) (dismissing follow-on administrative proceeding after court of appeals, while petition for review was pending before Commission, vacated injunction that was basis for OIP); *Evelyn Litwok*, Advisers Act Release No. 3438, 2012 SEC LEXIS 2328 (July 25, 2012) (dismissing follow-on proceeding after court of appeals, while petition for review was pending before Commission, reversed certain convictions and vacated and remanded other convictions, all of which were basis for OIP); *Kenneth E. Mahaffy, Jr.*, Exchange Act Release No. 68462, 2012 SEC LEXIS 4020 (Dec. 18, 2012) (vacating bar issued in follow-on administrative proceeding where court of appeals, after Commission had issued bar order, vacated criminal conviction that was basis for proceeding).

<sup>4</sup> Div. Ex. 2 is a March 7, 2017, Certificate of Disposition of *People v. Penn*, signed by the court clerk, that states it is based on an examination of the records of the case. Div. Ex. 16 is the transcript of the March 16, 2015, plea hearing.

June 10, 2016. Div. Ex. 11. On September 26, 2017, the Appellate Division, First Department affirmed the trial court's ruling. Div. Ex. 12.

On August 22, 2017, Penn was enjoined against violations of the antifraud provisions of the Exchange and Advisers Acts in *SEC v. Penn*. *SEC v. Penn*, ECF No. 168; ECF No. 178 at 19; ECF No. 198 at 5.<sup>5</sup> The court ordered further proceedings to determine the amount of disgorgement and civil penalties. *Id.*, ECF No. 198. An evidentiary hearing concerning this is currently scheduled to commence on August 1, 2018. *Id.*, ECF No. 276.

Penn is not currently registered; he was last registered with FINRA in 2001, associated with Lazard Freres & Co. LLC. See <https://brokercheck.finra.org> (search for "Lawrence Edward Penn" as "Name") (last visited June 12, 2018). Camelot Acquisitions Secondary Opportunities Management, LLC, was a Commission-registered investment adviser; it was a sponsor, general partner, managing member (or equivalent) of pooled investment vehicles. See <https://www.adviserinfo.sec.gov/IAPD> for its last Form ADV, filed on August 14, 2013. It was an adviser to three private equity funds: Camelot Acquisitions: Secondary Opportunities Offshore, L.P.; Camelot Acquisitions: Secondary Opportunities, L.P.;<sup>6</sup> and Caso Co-Invest A, LLC *Id.* These funds' general partner was Camelot Acquisitions: Secondary Opportunities G.P., L.L.C. *Id.* Penn was the adviser's managing member, managing director, and control person and had primary responsibility for all of its business decisions. *Id.*; *SEC v. Penn*, ECF No. 134 at 4-5. The adviser's registration was cancelled on January 8, 2016. <https://www.sec.gov/rules/other/2016/ia-4308.pdf>.

The following adjudicated facts are found in the court's August 22, 2017, Opinion and Order, *SEC v. Penn*, ECF No. 198 at 2: Between 2010 and 2013, Penn diverted \$9,286,916.65 from Camelot Acquisitions: Secondary Opportunities, L.P., through a series of fictitious invoices for "due diligence." The invoices were from Ssecurion, a company set up by Penn and an accomplice. Ssecurion transferred most of the moneys to other entities controlled by Penn.

### III. CONCLUSIONS OF LAW

Penn has been enjoined "from engaging in or continuing any conduct or practice in connection with any [investment adviser] activity [and] in connection with the purchase or sale of any security" within the meaning of Sections 203(e)(4) and 203(f) of the Advisers Act and has been convicted within ten years of the commencement of this proceeding of a felony that "involves the purchase or sale of any security" and that "arises out of the conduct of the business of a broker, dealer, . . . investment adviser, [or] involves the larceny, theft, . . . or misappropriation of funds, . . . or substantially equivalent activity" within the meaning of Sections 203(e)(2)(A), (B), (C) and

---

<sup>5</sup> ECF No. 168 is attached to the Division's motion for summary disposition as Div. Ex. 3, and ECF No. 198 is attached to the motion for summary disposition and to Penn's opposition as Div. Ex 4 and Resp. Ex. E, respectively. Penn filed a Notice of Appeal of ECF No. 168, but the parties filed a stipulation withdrawing the appeal, which the Court of Appeals "So Ordered." *SEC v. Penn*, ECF No. 184; Resp. Ex. F.

<sup>6</sup> These two funds were a master feeder arrangement. *Id.*

203(f) of the Advisers Act.<sup>7</sup> Camelot Acquisitions Secondary Opportunities Management, LLC, was an investment adviser, and Penn was a person associated with an investment adviser. See Section 202(a)(17) of the Advisers Act.

#### IV. SANCTION

As the Division requests, a collateral bar will be ordered.<sup>8</sup>

##### 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)). The Commission also considers the age of the violation and the degree of

---

<sup>7</sup> Penn's conviction for larceny and falsifying business records in itself is a basis for the sanction ordered herein. The Commission has the authority to bar individuals based on convictions involving dishonesty that are not securities-related. See *Kornman v. SEC*, 592 F.3d 173, 180 (D.C. Cir. 2010) (citing with approval the Commission's policy that "the importance of honesty for a securities professional is so paramount that [the Commission has] barred individuals even when [a respondent's] conviction was based on dishonest conduct unrelated to securities transactions or securities business") (quoting *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at \*23 (Feb. 13, 2009)); *Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 SEC LEXIS 158, at \*20-21 & n.27 (Jan. 14, 2011) (holding conviction for tax violation relevant to determine whether an individual is fit to work in an industry where honesty and rectitude concerning financial matters is critical); *Ahmed Mohamed Soliman*, Exchange Act Release No. 35609, 1995 SEC LEXIS 968, at \*7-8 (Apr. 17, 1995) (revoking registration and imposing broker-dealer and investment adviser bars based on a misdemeanor conviction for submitting false documents to the Internal Revenue Service); *Bruce Paul*, Exchange Act Release No. 21789, 1985 SEC LEXIS 2094, at \*4-5 (Feb. 26, 1985) (imposing broker-dealer bar with right to reapply for conviction of making false statements on income tax returns); *Benjamin Levy Sec., Inc.*, Exchange Act Release No. 14368, 1978 SEC LEXIS 2430, at \*4-5 (Jan. 12, 1978) (imposing broker-dealer and investment adviser bars and other sanctions based on conviction for making false statements in a loan application). The securities business is "a field where opportunities for dishonesty recur constantly." *Soliman*, 1995 SEC LEXIS 968, at \*10.

<sup>8</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which became effective on July 22, 2010, provided collateral bars in each of the several statutes regulating different aspects of the securities industry. Penn's injunction, conviction, and most of his underlying conduct occurred after July 22, 2010.

harm to investors and the marketplace resulting from the violation. *Melton*, 2003 SEC LEXIS 1767, at \*4-5. Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. *Schild 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**

As described in the Findings of Fact, Penn's conduct was egregious and recurrent, involving the diversion of millions of dollars over a period of at least three years. As such there was a high degree of scienter. Penn's previous occupation, if he were allowed to continue it in the future, would present opportunities for future violations. Absent a bar, he could re-enter the securities industry. The violations are relatively recent but could not, in any event, have continued after his 2014 incarceration. Consistent with a vigorous defense of this proceeding, Penn has not recognized the wrongful nature of his conduct.

The degree of direct financial harm to investors is quantified in the approximately \$8.3 million in restitution he was ordered to pay, and, 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), *pet. granted in part on other grounds*, 547 F.2d 171 (2d Cir. 1976). A conviction involving dishonesty requires a bar, and because of the Commission's obligation to ensure honest securities markets, an industry-wide bar is appropriate.

## **V. ORDER**

IT IS ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, LAWRENCE E. PENN, III, 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 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.

---

Carol Fox Foelak  
Administrative Law Judge