Initial Decision Release No. 1349
Administrative Proceeding
File No. 3-17888

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

In the Matter of

William D. Bucci

Initial Decision of Default
February 12, 2019

Appearances: Christopher R. Kelly for the Division of Enforcement, Securities and Exchange Commission

Before: James E. Grimes, Administrative Law Judge

Summary

I grant the Division of Enforcement's motion for default and sanctions. Respondent William D. Bucci is barred 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.

Procedural Background

The Securities and Exchange Commission initiated this proceeding in March 2017, when it issued an order instituting proceedings (OIP) under Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.[1] This is a follow-on proceeding based on Bucci's June 2016 guilty plea in the United States District Court for the Eastern District of Pennsylvania.[2]

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1 OIP at 1; *see* 15 U.S.C. §§ 78*o*(b), 80b-3(f).

2 *See United States v. Bucci*, No. 2:14-cr-191 (E.D. Pa.).

A different administrative law judge originally presided over this proceeding and issued an initial decision of default.[3] But the Commission vacated that decision following the Supreme Court's decision in *Lucia v. SEC*,[4] and the matter was reassigned to me to provide Bucci with the opportunity for a new hearing.[5] Bucci was directed to propose how further proceedings should be conducted,[6] but he never submitted a proposal or filed an answer.[7] Thereafter, I found that Bucci had been served with the OIP and ordered him to show cause why the proceeding should not be determined against him due to his failure to answer the OIP or otherwise defend the proceeding.[8]

After Bucci failed to respond to the order to show cause or participate in a prehearing conference,[9] the Division filed a motion for default and sanctions, supported by a declaration and five exhibits.[10] In conducting this proceeding and considering the Division's motion, I have given no weight to the opinions, orders, or rulings issued by the prior administrative law judge.[11]

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[3] *William D. Bucci*, Initial Decision Release No. 1144, 2017 WL 2572436 (ALJ June 14, 2017).

[4] 138 S. Ct. 2044 (2018); *see Pending Admin. Proc.*, Securities Act of 1933 Release No. 10536, 2018 WL 4003609, at *1 (Aug. 22, 2018).

[5] *Pending Admin. Proc.*, Admin. Proc. Rulings Release No. 5955, 2018 SEC LEXIS 2264, at *2–3 (ALJ Sept. 12, 2018).

[6] *William D. Bucci*, Admin. Proc. Rulings Release No. 5979, 2018 SEC LEXIS 2322, at *1 (ALJ Sept. 14, 2018).

[7] *William D. Bucci*, Admin. Proc. Rulings Release No. 6225, 2018 SEC LEXIS 2895, at *1 (ALJ Oct. 18, 2018).

[8] *Id.* at *1–2.

[9] *William D. Bucci*, Admin. Proc. Rulings Release No. 6317, 2018 SEC LEXIS 3189, at *1 (ALJ Nov. 9, 2018).

[10] The exhibits are cited as "Div. Ex. _" using the documents' internal pagination.

[11] *See Pending Admin. Proc.*, 2018 WL 4003609, at *1.

Findings of Fact

The findings and conclusions in this initial decision are based on the record and on facts officially noticed.[12] Because Bucci is in default, I have deemed true the allegations in the OIP and, consistent with Commission precedent, will rely on those allegations in conjunction with other evidence in the record developed since the proceeding was reassigned to me.[13] That other evidence includes the facts admitted when Bucci pleaded guilty in the criminal action that serves as the basis for this proceeding,[14] and the facts found by the district court during sentencing.[15] In making the findings below, I have applied preponderance of the evidence as the standard of proof.[16]

For at least a decade Bucci was an active participant in the securities industry. He was a registered representative of Ryan Beck & Company from April 2002 through April 2007, of Oppenheimer & Company from April 2007 through August 2011, and of Financial Network Investment Corporation from August 2011 through May 2012.[17] All three companies were registered with the Commission as broker-dealers and investment advisers when Bucci

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[12] 17 C.F.R. § 201.323.

[13] *See Pending Admin. Proc.*, 2018 WL 4003609, at *1; *see also* 17 C.F.R. § 201.155(a); *David E. Lynch*, Exchange Act Release No. 46439, 2002 WL 1997953, at *1 & n.12 (Aug. 30, 2002) (instructing that, "if additional evidence is adduced in a proceeding against a respondent" who is in default, "the decisionmaker properly should consider that evidence in the determination of the proceeding").

[14] In pleading guilty, Bucci stipulated to certain facts specified in a written plea memorandum and supplemented by his counsel during the plea colloquy. *See* Div. Exs. 1, 2. I therefore rely on those facts rather than the facts alleged in the second superseding indictment. *See, e.g.*, *United States v. White*, 408 F.3d 399, 402–03 (8th Cir. 2005) (finding that a defendant's guilty plea did not constitute an admission to facts that the defendant disavowed during his plea hearing); *Valansi v. Ashcroft*, 278 F.3d 203, 216 n.10 (3d Cir. 2002) (recognizing that a defendant "may . . . plead guilty to only one of the allegations required to prove an element of her crime").

[15] *See* Div. Ex. 5.

[16] *See John Francis D'Acquisto*, Advisers Act Release No. 1696, 1998 WL 34300389, at *2 (Jan. 21, 1998).

[17] OIP at 1–2.

was associated with them.[18] And for most of that time, Bucci was operating a patchwork scheme to defraud his clients, friends, and family.[19]

From 2004 through 2011, Bucci promised prospective investors that they would earn "as much as 10% annual interest" with return of principal within two or three years.[20] But instead of investing his investors' money in real estate or an olive oil and wine business as promised, Bucci used it to pay principal and interest on his substantial preexisting indebtedness.[21] He did not disclose these debts to his investors before they invested.[22] And even when pressed for financial records by disgruntled investors, he disclosed only his debts to financial institutions, omitting his substantial debts to personal lenders.[23] He continued to promise repayment even when he "had little reasonable expectation that he would be able to repay outstanding debts."[24] Bucci later acknowledged that the information that he concealed from prospective investors was material to their decision to invest.[25]

On June 8, 2016, Bucci pleaded guilty to one count of securities fraud in violation of Exchange Act Section 10(b) and Rule 10b-5, four counts of mail fraud, and one count of mortgage fraud.[26] He stipulated to facts sufficient to establish the elements of those offenses, including using a device or scheme to defraud in connection with the purchase or sale of a security.[27] He also pleaded *nolo contendere* to five counts of submitting a false tax return.[28]

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18 *Id.*

19 Div. Ex. 1 at 1.

20 *Id.* at 1–2

21 *Id.* at 1; Div. Ex. 2 at 48.

22 Div. Ex. 1 at 1–2

23 *Id.* at 2.

24 *Id.*

25 *Id.*

26 OIP at 2; Div. Ex. 1 at 1–2; *see* 15 U.S.C. §§ 78j(b); 18 U.S.C. §§ 1014, 1341; 17 C.F.R. § 240.10b-5.

27 Div. Exs. 1 at 2; 2 at 31–32, 43, 48–49.

28 OIP at 2; Div. Ex. 1 at 1; *see* 26 U.S.C. § 7206(1).

The district court sentenced Bucci to seventy-eight months' imprisonment and ordered him to pay $3,011,951.24 in restitution to the Internal Revenue Service and twenty-one identified victims.[29] During the sentencing hearing, the court found that "Mr. Bucci has not truthfully admitted the conduct for which he is accountable" or "accept[ed] responsibility," and it was "not convinced that Mr. Bucci understands the full magnitude of what he's done."[30] The court further criticized Bucci for "attempt[ing] to minimize, to some extent," the number of people injured by his scheme.[31]

Conclusions of Law

Under the Exchange Act, the Commission may impose collateral and penny stock bars[32] against Bucci if, as is relevant here, (1) he was associated with or seeking to become associated with a broker or dealer at the time of his misconduct; (2) he was convicted within ten years before the issuance of the OIP of an offense "involv[ing] the purchase or sale of any security"; and (3) imposing a bar is in the public interest.[33] The Advisers Act gives the

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[29] Div. Ex. 4 at 2, 5–7.

[30] Div. Ex. 5 at 93–94, 141.

[31] *Id.* at 141.

[32] A collateral bar, also referred to as an industry bar, is a bar that prevents an individual from participating in the securities industry in capacities in addition to those in which the person was participating at the time of his or her misconduct. *See Toby G. Scammell*, Advisers Act Release No. 3961, 2014 WL 5493265, at *1 & n.1 (Oct. 29, 2014).

[33] 15 U.S.C. § 78*o*(b)(4)(B)(i), (6)(A)(ii). Although Bucci's misconduct began before Congress conferred the authority to impose a collateral bar in the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010), he continued to sell securities as part of an ongoing fraudulent scheme for over a year after collateral bars were authorized. *See Bartko v. SEC*, 845 F.3d 1217, 1220–21, 1224 (D.C. Cir. 2017) (holding that a collateral bar cannot be imposed for wrongdoing committed before July 22, 2010, the effective date of Dodd-Frank); Div. Ex. 1 at 1 (admitting that the scheme continued "through 2011").

Commission similar authority with respect to a person associated with or seeking to be associated with an investment adviser.[34]

The first two requirements are satisfied. During the entire duration of Bucci's fraudulent scheme, he was a registered representative of a series of three companies that were dually registered as broker-dealers and investment advisers.[35] And, in 2016, Bucci pleaded guilty to securities fraud based on that same scheme.[36]

The third requirement—the public's interest—is also satisfied. In making that determination, I have considered the factors discussed in *Steadman v. SEC*[37]:

> the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[38]

I have also considered the deterrent effect of administrative sanctions.[39] This public interest inquiry is "flexible, and no one factor is dispositive."[40]

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[34] 15 U.S.C. § 80b-3(e)(4), (f). The Advisers Act does not authorize imposition of a penny stock bar.

[35] *Compare* OIP at 1–2, *with* Div. Ex. 1 at 1; Div. Ex. 2 at 43.

[36] OIP at 2; Div. Exs. 1 at 1–2, 4 at 1. Bucci also pleaded guilty to four counts of mail fraud in 2016—an additional and independent basis for finding the second requirement satisfied. *See* OIP at 2; 15 U.S.C. §§ 78*o*(b)(4)(B)(iv), (6)(A)(ii), 80b-3(e)(2)(D), (f).

[37] 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Scammell*, 2014 WL 5493265, at *5.

[38] *David R. Wulf*, Exchange Act Release No. 77411, 2016 WL 1085661, at *4 (Mar. 21, 2016) (citing *Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 WL 1377357, at *4 & n.18 (Apr. 20, 2012)).

[39] *See Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *11 n.72 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). Although relevant, general deterrence is not determinative in assessing whether the

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In weighing the public interest, I am mindful that "in most" cases involving fraud, the public-interest analysis will weigh in favor of a "severe sanction."[41] And because "[t]he securities industry presents continual opportunities for dishonesty and abuse," it "depends heavily on the integrity of its participants and on investors' confidence."[42] Investment advisers, in particular, serve as fiduciaries who owe their clients "an affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts,' as well as an affirmative obligation to employ reasonable care to avoid misleading clients."[43] Given the industry's dependence on the integrity of its participants, the duty investment advisers owe their clients, and the confidence and trust investors necessarily place in investment advisers, the Commission takes a particularly dim view of investment advisers who defraud their clients.[44] Evaluating the *Steadman* factors through this lens, it is plain that collateral and penny stock bars are appropriate.

Bucci's fraud was egregious and recurrent. He made promises regarding repayment and rates of return that he knew were improbable, if not

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public interest weighs in favor of imposing a bar. *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1066 (D.C. Cir. 2007).

[40] *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *6 (Feb. 13, 2009) (quoting *David Henry Disraeli*, Securities Act Release No. 8880, 2007 WL 4481515, at *15 (Dec. 21, 2007), *pet. denied*, 334 F. App'x 334 (D.C. Cir. 2009)), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010).

[41] *Siris*, 2013 WL 6528874, at *11 n.71 (quoting *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at *7 (Feb. 4, 2008), *pet. denied*, 561 F.3d 548 (6th Cir. 2009)).

[42] *Mark Feathers*, Exchange Act Release No. 73634, 2014 WL 6449870, at *3 (Nov. 18, 2014) (alteration in original) (quoting *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *6 & n.53 (July 26, 2013)).

[43] *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *7 (Sept. 26, 2007) (ultimately quoting *Capital Gains Research Bureau v. SEC*, 375 U.S. 180, 194 (1963)), *pet. denied*, 548 F.3d 129 (D.C. Cir. 2008).

[44] *See James C. Dawson*, Advisers Act Release No. 3057, 2010 WL 2886183, at *4 (July 23, 2010) ("[W]e have consistently viewed misconduct involving a breach of fiduciary duty or dishonest conduct on the part of a fiduciary, such as the fraud committed by Dawson on his clients, as egregious.").

impossible.[45] He concealed information regarding his personal finances that he knew would be material to investors.[46] He exploited not only his adviser-advisee relationships, but personal relationships with friends and family.[47] In short, over the course of a decade, Bucci stole at least $3 million from over twenty people who trusted him.[48]

The behavior that made Bucci's fraud egregious also evidences a high degree of scienter. He told investors that he was using their money to invest in one thing—an olive oil and wine shop, real estate—when he was, instead, using it to pay the personal debts that he had concealed from the same investors.[49] No matter how much he may have "hope[d]" to make up that money from other deals, there can be no doubt that he knew as a long-time industry professional that he was abusing his clients' trust.[50] Furthermore, his Section 10(b) violation necessarily involved scienter.[51]

By defaulting in this proceeding, Bucci has neither made assurances against future violations nor shown that he recognizes the wrongful nature of his conduct. Insofar as there is any evidence relevant to his recognition of his wrongdoing in the record, the district court found that he failed to accept responsibility for his actions or to fully understand why his behavior was wrong in the first place.

Moreover, allowing Bucci to remain in the securities industry would present him with future opportunities for further misconduct and would put the investing public at risk. In this regard, the fact of Bucci's criminal

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45 Div. Ex. 1 at 2.

46 *Id.* at 1–2.

47 *Id.* at 1.

48 *See Id.*; Div. Ex. 4 at 2, 5–7.

49 Div. Ex. 1 at 1–2.

50 *Id.*

51 *See* 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5; *Aaron v. SEC*, 446 U.S. 680, 701–02 (1980).

misconduct "raises an inference that" he will repeat it.[52] That inference is supported by my determination that Bucci's conduct was egregious.[53]

Finally, imposing a bar will serve the Commission's interest in deterring others from engaging in similar misconduct.

In sum, Bucci's egregious conduct harmed investors and if he were able to remain in the industry, he would have the opportunity to cause additional harm. The Commission's interest in protecting the investing public would be served by imposing a collateral and penny stock bar.

Order

The Division of Enforcement's motion for default and sanctions is GRANTED.

Under Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, William D. Bucci is BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Under Section 15(b) of the Securities Exchange Act of 1934, William D. Bucci 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 of trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

This initial decision will become effective in accordance with and subject to the provisions of Rule 360.[54] Under that rule, a party may file a petition for review of this initial decision within twenty-one days after service of the

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[52] *Korem*, 2013 WL 3864511, at *6 n.50 (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)).

[53] *See Geiger*, 363 F.3d at 489 (holding that a finding of egregiousness "justifies the inference" that misconduct will recur); *Warwick Capital Mgmt., Inc.*, Advisers Act Release No. 2694, 2008 WL 149127, at *11 (Jan. 16, 2008) ("The existence of a violation raises an inference that the violation will be repeated, and where the misconduct resulting in the violation is egregious, the inference is justified.").

[54] *See* 17 C.F.R. § 201.360.

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.[55] 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.

Bucci may move to set aside a default. Rule 155(b) permits the Commission, at any time, to set aside a default for good cause, in order to prevent injustice and on such conditions as may be appropriate.[56] 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. Such motion, if filed, should be directed to the Commission, as the hearing officer may only set aside a default "prior to the filing of the initial decision."[57]

James E. Grimes
Administrative Law Judge

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[55] *See* 17 C.F.R. § 201.111.

[56] 17 C.F.R. § 201.155(b).

[57] *Id.*