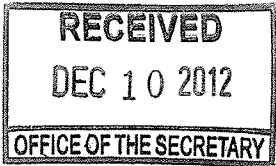


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



Administrative Proceeding  
File No. 3-14981

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In the Matter of :  
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Ross Mandell :  
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Respondent. :  
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**REPLY MEMORANDUM OF LAW IN SUPPORT OF DIVISION OF  
ENFORCEMENT’S MOTION FOR SUMMARY  
DISPOSITION AGAINST RESPONDENT ROSS MANDELL**

Pursuant to Rule 250 of the Securities and Exchange Commission’s Rules of Practice, the Division of Enforcement (“Division”) respectfully submits this reply brief in support of its motion for summary disposition against respondent Ross Mandell (“Mandell” or “Respondent”).

On November 20, 2012, the Respondent submitted his response to the Division’s motion for summary disposition. Mandell essentially and impermissibly attempts to collaterally attack the merits of his criminal conviction.

Mandell first requests that this Court “conduct a review of the whole record [of his criminal case], including the trial transcript and the attached documents relating to the pending appeal.” Mandell thus attempts to collaterally attack either the legal or factual basis for his conviction, but any such alleged defense is barred by the doctrine of collateral estoppel. See Parklane Hosiery Co., Inc. v. Shore, 439 U.S. 322, 326-334 (1979); In the Matter of David G. Ghysels and Kenneth E. Mahaffy, Jr., Exchange Act Rel. 34-62937 (Sep. 20, 2010)

("Respondents are foreclosed from using this proceeding to challenge their criminal convictions, and these collateral estoppel principles extend to [respondent's] procedural and constitutional claims."); In the Matter of Jose P. Zollino, Exchange Act Rel. 34-55107, 2007 SEC LEXIS 85, at \*16 n. 20 (Jan. 16, 2007) ("[A] party cannot challenge his . . . criminal conviction in a subsequent administrative proceeding"); William F. Lincoln, Exchange Act Rel. No. 39629, 1998 SEC LEXIS 193, at \*8, (Feb. 9, 1998) (In proceedings based on a criminal conviction, a respondent "is collaterally estopped from attacking here the merits of the criminal proceeding against him.").

Mandell further claims that the Court of Appeal's granting his motion for bail pending appeal suggests that he is likely to succeed on his appeal. The Second Circuit, however, did not state its rationale for granting Mandell's motion. See United States v. Mandell, No.12-1967 (2d Cir. July 19, 2012). In any event, Mandell's argument remains an impermissible collateral attack on the merits of his conviction. As noted above, as long as the conviction remains in place, this Court has a basis to grant the Division's requested relief against Mandell and should do so.


Mandell also claims that the mere pendency of his appeal is a sufficient basis to deny the Division's motion. As previously noted, however, the pendency of an appeal does not preclude the imposition of a bar here. See Elliott v. SEC, 36 F.3d 86, 87 (11<sup>th</sup> Cir. 1994) ("Nothing in the statute's language prevents a bar [from being] entered if a criminal conviction is on appeal."); Hunt v. Liberty Lobby, Inc., 707 F.2d 1493, 1497 (D.C. Cir. 1983) ("Under well-settled federal law, the pendency of an appeal does not diminish the *res judicata* effect of a judgment rendered by a federal court."). Accordingly, the Commission may impose remedial, disciplinary sanctions against Mandell based upon his criminal conviction. See 15 U.S.C. §78o(b).

Finally, Mandell claims that the Division's Motion is "flawed and misleading" and "blatantly incorrect and false." However, Mandell does not provide any specific instances to support these claims.

**CONCLUSION**

For the foregoing reasons, the Division respectfully requests that its motion for summary disposition be granted, and that the Court issue an order barring Mandell from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or NRSRO.

Dated: December 7, 2012  
New York, New York

  
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