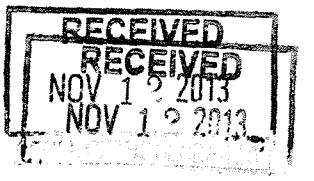
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Administrative Proceeding
File No. 3-15308

In the Matter of

JOSEPH CONTORINIS,

Respondent.



DIVISION OF ENFORCEMENT'S REPLY IN FURTHER SUPPORT OF ITS MOTION FOR SUMMARY AFFIRMANCE OF INITIAL DECISION

U.S. Securities and Exchange Commission,
Division of Enforcement

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PRELIMINARY STATEMENT

Securities and Exchange Commission Rule of Practice ("Rule") 411(e)(2) and the Division of Enforcement's Memorandum in Support of its Motion for Summary Affirmance of the Initial Decision (the "Opening Brief") clearly demonstrate that summary affirmance may be granted where, as here, an administrative law judge's initial decision does not raise any issue that warrants consideration by the Commission of further oral or written argument. In his Memorandum of Law in Opposition to Division of Enforcement's Motion for Summary Affirmance (the "Opposition"), Contorinis fails to demonstrate that: (1) the Commission has not met its burden of showing that summary affirmance should be granted; (2) the proceedings are time-barred under 28 U.S.C. § 2462; and (3) a lifetime associational bar is not warranted.

First, Contorinis fails to provide any support for his conclusory statement that the Division has not met the summary affirmance standard. The arguments set forth in the Division's Opening Brief belie Contorinis's contention. Notwithstanding Contorinis's selective quotations concerning how infrequent it is for the Commission to summarily affirm an initial decision, the Commission recently expressed its receptiveness to summarily affirming cases, such as this, where the relevant facts are undisputed and the initial decision does not embody an important question of law or policy warranting further review by the Commission.

Second, Contorinis's continued assertion that this proceeding is time-barred under 28 U.S.C. § 2462 in light of the Supreme Court's decision in Gabelli v. SEC, 133 S. Ct. 1216 (2013), misconceives the holding of that case and the nature of the Division's claims in this matter. The Division here brought its claims against Contorinis under Sections 15(b)(6)(A)(ii) and (iii) of the Securities Exchange Act of 1934 (the "Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 (the "Advisers Act") based on: (1) Contorinis's October 6,

2010 criminal conviction for one count of conspiracy to commit securities fraud and seven substantive counts of securities fraud; and (2) the February 3, 2012 final judgment entered against him in a related Commission civil action permanently enjoining Contorinis from further violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Accordingly, the Division's claims were all timely brought within five years of when such claims first accrued.

Third, for all the reasons made clear in the Division's Opening Brief, Contorinis's contention that the presiding administrative law judge's ("ALJ's") Initial Decision entering a permanent, industry-wide collateral bar and penny stock bar against Contorinis is erroneous is unsupported by either the facts or the law. Contorinis bases his argument on: (1) a misreading of the factors outlined in Steadman v. SEC, 603 F.2d 1126 (5th Cir. 1979); (2) the spurious assertion that the ALJ erred in issuing a lifetime associational bar, rather than a lesser sanction; and (3) the mistaken view that his conduct was neither egregious nor recurrent. Contorinis's grievances are fatally flawed, and should be dispensed with via summary affirmance.

For all these reasons, and those set forth in more detail below, Contorinis has not demonstrated a reasonable showing that a prejudicial error was committed in the conduct of the proceeding or that the decision embodies an exercise of discretion or decision or law or policy that is important and that the Commission should review. Accordingly, the Division respectfully requests that the Commission summarily affirm the ALJ's Initial Decision.

ARGUMENT

Contorinis's arguments in opposition to the Division's Motion for Summary Affirmance are unpersuasive because: (1) this administrative proceeding falls squarely within the Commission's standards for granting summary affirmance; (2) this administrative proceeding is not time-barred by the five-year statute of limitations under 28 U.S.C. § 2462; and (3) the

permanent, industry-wide collateral bar and penny stock bar imposed by the Initial Decision are in the public interest.

I. This Administrative Proceeding Falls Squarely Within the Commission's Standards for Granting Summary Affirmance.

Rule 411(e)(2) states, in relevant part: "The Commission may grant summary affirmance if it finds that no issue raised in the initial decision warrants consideration by the Commission of further oral or written argument." The Rule also provides: "The Commission will decline to grant summary affirmance upon a reasonable showing that a prejudicial error was committed in the conduct of the proceeding or that the decision embodies an exercise of discretion or decision of law or policy that is important and that the Commission should review." Contrary to Contorinis's conclusory assertions, this case falls squarely within the Commission's standards for granting summary affirmance.

Notwithstanding this fact, Contorinis argues—or at the very least suggests—that the Commission should deny the Division's motion for summary affirmance based on the historical facts that: (1) "'[s]ummary affirmance is rare'"; (2) "'[t]he Commission grants virtually all petitions for review'"; and (3) "the Commission has granted summary affirmance 'only a handful of times in the last 30 years.'" (Opp'n at 2-3 (quoting Don Warner Reinhard, Advisers Act Release No. 2984, 2010 WL 421305, at *3 (Feb. 4, 2010) (Opinion of the Commission); Rules of Practice, 60 Fed. Reg. 32,738, 32,774 (June 23, 1995); Theodore W. Urban, Exchange Act Release No. 63456, 2010 WL 5092728, at *2 (Dec. 7, 2010) (Opinion of the Commission) (internal quotation marks omitted))). These arguments have no merit. As an initial matter—putting aside the historical frequency in which the Commission has previously granted motions for summary affirmance—the Commission grants summary affirmance where, as here, its standards for doing so have been met. See, e.g., A-Power Energy Generation Systems, Ltd.,

Exchange Act Release No. 69439, 2013 WL 1755036 (April 24, 2013) (Order of the Commission) (summarily affirming in part the administrate law judge's factual and legal findings on its own initiative); Andover Holdings, Inc., Exchange Act Release No. 68966, 2013 WL 653011 (Feb. 21, 2013) (Opinion of the Commission) (summarily affirming the administrate law judge's initial decision). Furthermore, in Eric S. Butler, the Commission recently stated:

> As indicated, we have conducted an independent review of the record in this case after giving the parties the opportunity to fully brief their positions. We note, however, that Commission Rule of Practice 411(e) authorizes "summary affirmance" of an initial decision where "no issue raised in the initial decision warrants consideration by the Commission of further oral or written argument." Although we generally have limited application of this rule in conducting our reviews, ***we may apply it in the future where, as here, the relevant facts are undisputed and the initial decision does not embody an important question of law or policy warranting further review by the Commission.***

Exchange Act Release No. 65204, 2011 WL 3792730, at *1 n.2 (Aug. 26, 2011) (Emphasis added). Accordingly, the Commission expressly contemplated the appropriateness of summary affirmance in cases such as this one.

Moreover, Contorinis has had a full and fair opportunity to raise any concern he may have with the ALJ's Initial Decision to the Commission. The parties' summary affirmance briefing schedule was anything but summary. Contorinis asked for, and received, an additional three weeks to prepare his Opposition (Oct. 7, 2013 Extension Order), and had more than enough space in his Opposition to set forth any and all arguments as to why the Commission should reject the Division's Motion for Summary Affirmance and instead grant his Petition for Review. (See generally Opp'n). Contorinis, quite simply, has provided no justification as to why—after his and the Division's arguments have been fully briefed and set forth for the Commission's consideration—he would in any way be prejudiced if the Commission were to address these issues at this time. Rather, it is abundantly clear that providing Contorinis yet another

opportunity to relitigate the same issues before the Commission would be a duplicative and fruitless exercise, let alone an inefficient use of the Commission's and the parties' resources.

II. This Administrative Proceeding is Not Time-Barred by the Five-Year Statute of Limitations Under 28 U.S.C. § 2462.

For all the reasons set forth at length in the Division's Opening Brief, the Division's claims were timely brought within five years of when they first accrued. Contorinis's arguments to the contrary are based on the erroneous assumption that the Division's causes of action first accrued at the time of Contoronis's underlying conduct. This position is demonstrably false, as made clear by the ALJ's July 3, 2013 Order and the Division's Opening Brief. (July 3, 2013 Order; Op. Br. at 8 (citing Michael J. Markowski, Exchange Act Release No. 44086, 2002 WL 1932001, at *1 (March 20, 2001) (Opinion of the Commission) (holding that the statute of limitations for a follow-on proceeding based on an injunction begins to run at the time the injunction was issued); Proffitt v. FDIC, 200 F.3d 855, 864-65 (D.C. Cir. 2000) ("While the FDIC might well have brought an action earlier . . ., its failure to do so does not render untimely, and therefore, unauthorized, its action based on the later occurring effect."); Vladislav Steven Zubkis, Exchange Act Release No. 52876, 2005 WL 3299148, at * 4 (December 2, 2005) (Opinion of the Commission) (noting that "the basis for this administrative proceeding is the injunction, which was entered less than five years before proceedings were instituted, and therefore within the limitations period"))).

Additionally, the ALJ's straight-forward application of Sections 15(b)(6)(A)(ii) and (iii) of the Exchange Act and Section 230(f) of the Advisers Act does not, in any manner, "leave defendants exposed to Government enforcement action . . . for an additional uncertain period into the future." Gabelli, 133 S. Ct. at 1223. The clear terms of these statutory provisions make it plain that Contorinis was exposed to actions under these sections of the Exchange Act and

Advisers Act, in conjunction with 28 U.S.C. § 2462, for a specific period of time, namely: (1) ten years following his criminal conviction for one count of conspiracy to commit securities fraud and seven substantive counts of securities fraud;[1] and (2) five years following entry of the final judgment in a related Commission civil action permanently enjoining Contorinis from further violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. This construction simply does not "expand the Commission's ability to commence proceedings at an indeterminate date." (Opp'n at 4).[2]

This administrative proceeding, accordingly, is not time-barred by the five-year statute of limitations under 28 U.S.C. § 2462.

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1 Contorinis's reliance on Proffitt to argue that the ten-year time period in which the Commission may initiate an action based on a criminal conviction under either Section 15(b)(6)(A)(ii) of the Exchange Act or Section 203(f) of the Advisers Act is not an alternative to the five-year statute of limitations in 28 U.S.C. § 2462 is misplaced. The Proffitt holding is expressly based on the D.C. Circuit's prior decision that the six-year statutory restriction on the FDIC's jurisdiction "was enacted 'solely to address the effects of . . . Stoddard v. Board of Governors, 868 F.2d 1308 (D.C.Cir.1989),'" in which "the court had held that banking regulatory agencies lost enforcement jurisdiction over individuals who left the industry." 200 F.3d at 862 (quoting CityFed Fin. Corp. v. OTS, 58 F.3d 738, 743 (D.C.Cir.1995)). That case, therefore, has no bearing on the statute of limitations question at issue here.

2 Contorinis's attempt to dismiss the public policy rationale—let alone the clear text of the statutory provisions—allowing the Commission to initiate follow-on proceedings after a criminal conviction or the entry of an injunction is unavailing. The suggestion that, in order to ensure that its claims are not time-barred, the Commission should have to initiate administrative proceedings and then stay them pending the resolution of criminal actions or contemporaneous federal district court litigation is not credible. Furthermore, the potential that a handful of present-day facts relevant to an administrative law judge's determination of whether it would be in the public interest in a follow-on proceeding to bar the respondent from the securities industry may not have been litigated does not change the fact that the issues and facts underlying the wrongful conduct would already have been litigated.

III. The Permanent, Industry-Wide Collateral Bar and Penny Stock Bar Imposed by the Initial Decision are in the Public Interest.

The Division has amply demonstrated in its briefing in support of its Motion for Summary Disposition and Opening Brief that the permanent, industry-wide collateral bar and penny stock bar imposed by the Initial Decision are in the public interest. In opposition, Contorinis argues that: (1) the last Steadman factor should be the "likelihood of future violations"; (2) the ALJ was required to explain why any sanction other than a lifetime associational bar would not be sufficient; and (3) Contorinis's conduct was neither egregious nor recurrent. These arguments lack any merit.

A. The Last Steadman Factor is the "Likelihood that the Respondent's Occupation Will Present Opportunities for Future Violations."

Contorinis argues that both the ALJ and the Division mischaracterize the final Steadman factor, and that it should instead be the "the likelihood of future violations." (Opp'n at 6). As the Fifth Circuit's decision in Steadman makes abundantly clear, however, the ALJ appropriately applied the final Steadman factor as: ". . . the likelihood that the defendant's occupation will present opportunities for future violations." Steadman, 603 F.2d at 1140. Here, Contorinis was criminally convicted of one count of conspiracy to commit securities fraud and seven substantive counts of securities fraud. It cannot be disputed that allowing Contorinis back in the securities industry would present him with opportunities for future violations, and therefore this Steadman factor weighs in favor of the permanent, industry-wide collateral and penny stock bar entered by the ALJ.

Additionally, Contorinis's unsupported assertion that "there is no risk of future violations and no risk is posed to the public" misses the point. The entire purpose of the Steadman factors is to evaluate the likelihood of future violations. Steadman, 603 F.2d at 1140 ("We do not agree

with Steadman that the Commission has unconstitutionally made a conclusive presumption of future wrongdoing on the basis of past misconduct, but we do agree that a fuller explanation of the need for these sanctions is required. At least the Commission specifically ought to consider and discuss with respect to Steadman the factors that have been deemed relevant to the issuance of an injunction: 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."). After careful review and analysis of each of the Steadman factors, the ALJ properly found that every single one of them weighs in favor of a permanent, industry-wide collateral and penny stock bar against Contorinis.

B. The ALJ Carefully Considered the Facts and Correctly Found It Appropriate and in the Public Interest to Enter a Permanent, Industry-Wide Collateral Bar Against Contorinis and to Bar Him from Participating in any Offering of a Penny Stock Based on the Six Steadman Factors.

As explained by the Division in its Opening Brief, the ALJ carefully considered the facts and correctly found it appropriate and in the public interest to enter a permanent, industry-wide collateral bar against Contorinis and to bar him from participating in any offering of a penny stock based on the six Steadman factors. Moreover, Contorinis provided no support—either in his Petition for Review or his Opposition—for his suggestion that the ALJ had an affirmative obligation in his Initial Decision specifically to "explain why any sanction other than a lifetime associational bar would not be sufficient to discourage others from engaging in the same conduct as Mr. Contorinis." (Opp'n at 8). Against this backdrop, Contorinis's contention that the ALJ failed "seriously to consider any sanction other than a lifetime association bar" is unavailing. (Id.).

Contorinis's argument that the ALJ's statement that a five-year bar would be "no bar at all" was erroneous and warrants review is unpersuasive. (Initial Decision at 8). On December 17, 2010, Contorinis was sentenced to 72 months in prison for his crimes. That undisputed fact was part of the record, and entirely consistent with the ALJ's conclusion that a five-year bar "would run essentially concurrently with his imprisonment." (Id.). At no point—either in proceedings before the ALJ, or before this Commission—has Contorinis submitted evidence as to when Contorinis will, in fact, be released from prison. Contorinis's arguments based on suppositions of when he may be released from prison should be disregarded.

Even assuming, arguendo, that Contorinis will be released on his purported release date of December 27, 2015, applicable case law still mandates the ALJ's entry of a permanent, industry-wide collateral bar against Contorinis and to bar him from participating in any offering of a penny stock. Where, as here, there is an absence of "extraordinary mitigating circumstances, [an individual convicted of securities fraud] cannot be permitted to remain in the securities industry." John S. Brownson, Exchange Act Release No. 46161, 2002 WL 1438186, at *2 (July 3, 2002); see also Butler, 2011 WL 3792730, at *4 (same). The ALJ's Initial Decision is, therefore, consistent with Commission precedent, and devoid of any error warranting review.

C. Contorinis's Conduct Was Egregious and Recurrent.

It is extremely troubling that, at this stage in the proceedings, Contorinis still maintains that his "conduct was not egregious or recurrent." (Opp'n at 9). As the ALJ made abundantly clear in the Initial Decision: "The Commission has repeatedly stated that insider trading or any 'conduct that violates the antifraud provisions of the federal securities laws is especially serious and subject to the severest of sanctions.'" (Initial Decision at 6) (citations omitted). Contorinis

was criminally convicted of engaging in a conspiracy to violate the antifraud provisions of the federal securities laws and of violating the same provisions on seven separate occasions. If that were not enough, "[i]ntensifying the egregiousness of Contorinis' acts is perjurious testimony he gave during his trial that resulted in a two-level enhancement to his sentence under the U.S. Sentencing Guidelines." (Id. at 7). Contorinis fails to address any of these points in either his Petition for Review or Opposition.

In regard to the recurrent nature of Contorinis's conduct, the ALJ held:

> Contorinis' misconduct was recurrent. As the judge noted in SEC v. Stephanou, under a similar analysis, "while [Contorinis'] conviction arose out of trades in only one company, [he] made multiple trades over the course of several weeks." Summary Judgment Order, p. 5. Respondent nonetheless claims that his violative acts consisted only of two discrete, isolated trade moves on December 22, 2005, and January 11, 2006, and, thus, his conduct was not recurrent. To be sure, he was found not guilty of sales on December 7, 2005. Div. Ex. F. But his contention otherwise ignores the entirety of the criminal scheme. The insider trading conspiracy, one of the charges for which Contorinis was convicted, allegedly began in 2004 and continued through June 2006, and involved thirty-four alleged overt acts. Div. Ex. D, pp. 4-10. Stephanou first told Contorinis about a potential deal for Albertsons on or around November 22, 2005, and continued periodically sharing information on which Contorinis traded, until Contorinis' last trade on January 12, 2006. (Id. at 7).

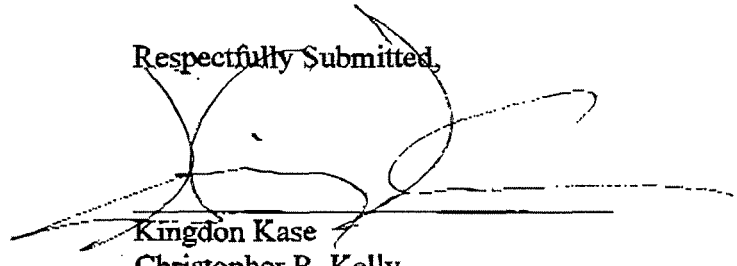
The ALJ specifically considered and rejected Contorinis's argument that his conduct was not recurrent. Contorinis does not—and cannot—identify any error in the ALJ's findings.

CONCLUSION

For all the foregoing reasons, and all the reasons set forth in the Division's Opening Brief, the Division respectfully requests that the Commission summarily affirm the ALJ's Initial Decision.

Dated: November 12, 2013

Respectfully Submitted,



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