

INITIAL DECISION RELEASE NO. 505
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15332

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

In the Matter of :
: INITIAL DECISION AS TO
JOSHUA CONSTANTIN and : JOSHUA CONSTANTIN
BRIAN SOLOMON : October 4, 2013

APPEARANCES: Preethi Krishnamurthy for the Division of Enforcement,
Securities and Exchange Commission

Allan L. Brenner for Joshua Constantin

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision bars Joshua Constantin (Constantin) from the securities industry.¹ He was previously enjoined from violating the antifraud provisions of the federal securities laws.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on May 23, 2013, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The undersigned granted the parties leave to file motions for summary disposition at a July 23, 2013, prehearing conference, pursuant to 17 C.F.R. § 201.250(a). Joshua Constantin, Admin. Proc. File No. 3-15332 (A.L.J. July 23, 2013) (unpublished). The Division of Enforcement (Division) timely filed its Motion for Summary Disposition on August 30, 2013. Constantin did not file an opposition.² The administrative law judge is required by 17 C.F.R. § 201.250(b) to act “promptly” on a motion for summary disposition.

¹ The proceeding has ended as to Brian Solomon. Brian Solomon, Exchange Act Release No. 70280 (Aug. 28, 2013), 2013 WL 4543993.

² The due date for Constantin’s opposition was September 6, 2013. Joshua Constantin, Admin. Proc. File No. 3-15332 (A.L.J. July 23, 2013) (unpublished).

This Initial Decision is based on (1) the Division's Motion for Summary Disposition; and (2) Constantin'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 Constantin was enjoined were decided against him in the civil case on which this proceeding is based. Any other facts in Constantin's Answer have been taken as true, pursuant to 17 C.F.R. § 201.250(a). 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 Constantin was enjoined from violating the antifraud provisions of the federal securities laws, in SEC v. Constantin, No. 11-cv-4642 (S.D.N.Y. May 6, 2013), based on wrongdoing while associated with a registered broker-dealer. The Division urges that he be barred from the securities industry.

C. Exhibits Admitted into Evidence

The following items, of which official notice is taken pursuant to 17 C.F.R. §§ 201.250(a), .323, which are also included in the Division's Motion for Summary Disposition at Exhibits 5, 6, and 7, are admitted as Division Exhibits 5, 6, and 7:

April 2, 2013, Memorandum Opinion and Order, SEC v. Constantin (Div. Ex. 5);

May 6, 2013, Final Judgment, SEC v. Constantin (Div. Ex. 6); and

Docket Report, SEC v. Constantin (Div. Ex. 7).

II. FINDINGS OF FACT

Constantin, 35, is a resident of Huntington, New York. Answer at 1. From at least July 2005 to April 2009, he was chief executive officer, managing member, and a registered representative of Windham Securities, Inc. (Windham), a registered broker-dealer. Id. From approximately March 1999 to October 2003, he was associated with several other broker-dealers. Id.

As found by the court in SEC v. Constantin: Windham was essentially a two-man firm, but Constantin promoted it to clients as a large, international company. Div. Ex. 5 at 5. He encouraged clients to believe that they could expect outsize returns on investments through Windham. Id. at 8. Based on misrepresentations, during 2008 and 2009, customers invested approximately \$1.2 million through Windham. Id. at 9-23. Constantin diverted at least \$643,000 of these customer funds to his own use to pay personal and business expenses. Id. at 40. To cover up the fraud, Constantin provided clients with misleading documents, such as account statements that represented holdings that the investor did not actually have. See, e.g., Id. at 13, 14, 21, 22. The court concluded that Constantin acted knowingly and intentionally to defraud Windham's clients. Id. at 47.

Constantin was (and is) permanently enjoined from violating the antifraud provisions of the federal securities laws – Section 17(a) of the Securities Act of 1933 (Securities Act) and Section

10(b) of the Exchange Act and Rule 10b-5 thereunder; jointly and severally with Windham, he was also ordered to pay a civil penalty of \$1,158,145 and to disgorge \$1,158,145 in ill-gotten gains plus prejudgment interest of \$176,577.85. Div. Ex. 6.

III. CONCLUSIONS OF LAW

Constantin has been permanently enjoined “from engaging in or continuing any conduct or practice in connection with [acting as a broker or dealer], or in connection with the purchase or sale of any security” within the meaning of Sections 15(b)(4)(C) and 15(b)(6)(A)(iii) of the Exchange Act.

IV. SANCTION

As the Division requests, a collateral bar will be ordered.³

A. Sanction Considerations

The Commission determines sanctions pursuant to a public interest standard. See Section 15(b)(6) of the Exchange Act. 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 harm to investors and the marketplace resulting from the violation. Marshall E. Melton, 56 S.E.C. 695, 698 (2003). Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. See Schield Mgmt. Co., Exchange Act Release No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 862 & n.46.

In proceedings based on an injunction, the Commission examines the facts and circumstances underlying the injunction in determining the public interest. See Marshall E. Melton,

³ The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), which became effective on July 22, 2010, provided collateral bars in each of the several statutes regulating different aspects of the securities industry. Constantin’s wrongdoing occurred before July 22, 2010. However, the Commission has determined that sanctioning a respondent with a collateral bar for pre-Dodd-Frank wrongdoing is not impermissibly retroactive, but rather provides prospective relief from harm to investors and the markets. John W. Lawton, Advisers Act Release No. 3513 (Dec. 13, 2012), 105 SEC Docket 61722; see also Alfred Clay Ludlum, III, Advisers Act Release No. 3628 (July 11, 2013), 2013 WL 3479060; Johnny Clifton, Securities Act Release No. 9417 (July 12, 2013), 2013 WL3487076; Tzemach David Netzer Korem, Exchange Act Release No. 70044 (July 26, 2013), 2013 WL 3864511.

56 S.E.C. at 698. “An injunction, by its very nature, is predicated on conduct that . . . violate[s] laws, rules, or regulations.” *Id.* at 709. The Commission considers an antifraud injunction to be particularly serious. *Id.* at 710. 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 *Richard C. Spangler, Inc.*, 46 S.E.C. 238, 252 (1976).

B. Sanctions

Constantin’s conduct was egregious and recurrent and involved a high degree of scienter. His previous occupation, if he were allowed to continue it in the future, would present opportunities for future violations. The violations are recent. The degree of harm to investors and the marketplace is indicated in the \$1,158,145 civil penalty and the \$1,158,145 in disgorgement that he was ordered to pay. Further, 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*, 55 S.E.C. 1133, 1145 (2002), *aff’d*, 340 F.3d 501 (8th Cir. 2003); *Arthur Lipper Corp.*, 46 S.E.C. 78, 100 (1975). A bar is also necessary for the purpose of deterrence. *Arthur Lipper Corp.*, 46 S.E.C. at 100.

V. ORDER

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(b), JOSHUA CONSTANTIN IS BARRED from associating with any 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.⁴

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 that 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.

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⁴ Thus, he will be barred from acting as a promoter, finder, consultant, or agent; or otherwise engaging 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, pursuant to Exchange Act Section 15(b)(6)(A), (C).

Administrative Law Judge