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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15448

In the Matter of

GARY A. COLLYARD,

Respondent.

DIVISION OF ENFORCEMENT'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION

Collyard's conviction for conspiracy to commit securities fraud and conspiracy to commit bank fraud compels the imposition of an industry bar in a summary adjudication. That he apparently regrets having pleaded guilty in no way alters that inevitability. Having chosen to plead guilty rather than face the uncertainty and risk of a criminal trial, Collyard is now bound by the consequences that flow from that decision. See Emich Motors Corp. v. General Motors Corp., 340 U.S. 558 (1951) (prior criminal conviction precludes re-litigation of issues resolved in the criminal case); Hyslop v. United States, 261 F.2d 786 (8th Cir. 1958) (preclusion may also be based on a criminal judgment after a guilty plea). In this tribunal, such consequences take the form of an industry bar. Gary M. Kornman, Exchange Act Release No. 59403, 2009 WL 367635 (Feb. 13, 2009); John S. Brownson, Exchange Act Release No. 46161, 2002 WL 1438186 at *2 (July 3, 2002) (summary disposition is particularly appropriate where respondent has pled guilty to securities fraud).

Should Collyard ultimately succeed in his quest to vacate his criminal conviction, the bar will also be revisited. But that mere theoretical possibility poses no impediment to a summary adjudication in this matter. See Elliot v. SEC, 36 F.3d 86, 87 (11th Cir. 1994); Hunt v. Liberty Lobby, Inc., 707 F.2d 1493, 1497 (D.C. Cir. 1983).

The fact that Collyard's conviction flowed from a plea agreement, rather than a full-blown trial on the merits, is a distinction without a difference. A registrant cannot avoid a bar by simply pleading guilty to defrauding investors. As one would expect, Collyard offers absolutely no legal support for such a perverse notion, nor has the undersigned found any such precedent.

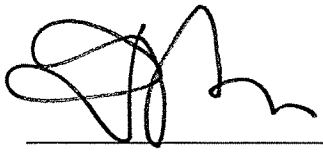
The fact that Collyard was an ***unregistered*** broker-dealer – since he didn't register with the Commission as he should have done – is another distinction without a difference. Section 15(b)(6) does not limit the imposition of a bar to those who registered with the Commission in the first place. Dale J. Englehardt, Exchange Act Release No. 64389, 2011 WL 1681678 (May 4, 2011); Scott B. Hollenbeck, Exchange Act Release No. 58847, 2008 WL 4693185 (October 24, 2008). Rather, Collyard earned the status as a broker-dealer – registered or not – by his conduct, as evidenced by critical admissions he made in his plea agreement. For in the course of pleading guilty, he admitted that he: communicated with investors to induce them to purchase securities; sold securities to investors; and received commissions for selling securities to investors. (Ex. B to Division Memo.) Those admissions are the beginning and the end of any inquiry about whether Collyard engaged in the broker-dealer activities that form the predicate for a bar. See SEC v. George, 426 F.3d 786 (6th Cir. 2005) (defendant acted as broker when he was regularly involved in communications with and recruitment of investors for the purchase of securities).

Further, Collyard's ***legal*** conclusions – as asserted in his and his attorney's affidavits – do not create an issue of ***fact***. Merely because he says he wasn't engaging in broker-dealer activities does not make it so.

For the foregoing reasons, the Court should grant the Division's motion for summary disposition and impose a collateral bar against Respondent.

Dated: February 6, 2014

Respectfully submitted,

By: 

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