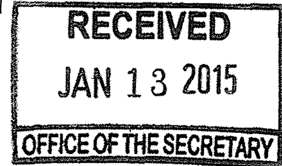
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-15617

In the Matter of
LARRY C. GROSSMAN
And GREGORY J. ADAMS,
Respondents.

LARRY C. GROSSMAN'S PETITION FOR REVIEW OF INITIAL DECISION

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Respondent Larry C. Grossman ("Grossman"), by his attorneys and pursuant to Rule 410 of the Securities and Exchange Commission ("SEC" or the "Commission") Rules of Practice, 17 C.F.R. §201.410, respectfully submits this petition for review of the December 23, 2014, Initial Decision finding Grossman's violation of each of the securities laws and rules set forth in the November 20, 2013, Order Instituting Administrative Proceeding ("OIP") ordering that Grossman pay $1,070,828 in penalties, $3,004,180.65 in disgorgement and barring Grossman from any association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from serving or acting as an employee, officer, director, member of an advisory board, investment advisor or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor or principal underwriter.

PRELIMINARY STATEMENT

The Securities and Exchange Commission's mission is to protect investors and the markets by timely investigating potential violations of the federal securities laws. The SEC has an array of legal tools at its disposal to aid in its pursuit of its mission, including surprise field audits, demands that investment advisers turn over their comprehensive books and records at any time, subpoena documents and witnesses without filing suit, and payment of awards to whistleblowers that provide information regarding securities law violations. Despite such resources, the SEC was traditionally permitted to bring action for violation of the securities laws seeking fines, penalties, forfeiture, disgorgement and injunctive relief against potential violators without regard to a statute of limitations or enjoyed the tolling of such statute until the SEC knew or should have known about the claims.

The Supreme Court in *Gabelli* has dramatically altered the landscape for securities violation claims brought by the SEC. Recognizing the SEC's mission and the fact that memories fade, evidence is lost, and potential defendants are entitled to closure, the Supreme Court instituted a bright line test holding that the five-year statute of limitations under 28 U.S.C. §2462 begins to run when the claim "first accrues." The Supreme Court left the door open as to whether equitable remedies such as injunctions, permanent bars and disgorgement were subject to the five-year statute of limitations under §2462, but a Federal Court located in the Southern District of Florida, quickly shut the door holding the statute of limitation for SEC to commence civil enforcement actions reaches all forms of relief sought by the SEC, including disgorgement.

The four-day administrative hearing that resulted in the Initial Decision against Grossman was a blue-print of the exact type of situation that the Supreme Court in *Gabelli* and the District Court in *Graham* sought to guard against. The testimony was plagued with uncertainty, because many of the areas of inquiry were related to events that occurred almost a decade before the filing of the OIP. Despite the sea of uncertainty, the record was clear that the Division knew as early as February 2005 of the conduct giving rise to the findings against Grossman, that Grossman's conduct occurred before his October 1, 2008, sale of his investment advisory firm, Sovereign International Asset Management, Inc. ("Sovereign") firm to Gregory Adams ("Adams"), and that the Division filed it OIP on November 20, 2013, five years after all claims against Grossman first accrued.

According to *Gabelli* and *Graham,* these facts should have resulted in a finding that all of the Division's remedies against Grossman were barred by §2462's five year statute of limitation. The ALJ, however, erroneously found that §2462's five year statute of limitation was inapplicable to the Division's remedies and that the doctrine of continuing violation warranted

the award of a civil penalty against Grossman. and The penalty, disgorgement and industry bar levied against Grossman are contrary to the law and violate the overall fundamental mission of the SEC espoused by the Supreme Court in *Gabelli*, namely to protect investors and the markets by timely investigating potential violations of the federal securities laws.

INITIAL DECISION'S FINDINGS & RELEVANT FACTS

Grossman was Sovereign's founder and sole owner until October 1, 2008, when he sold Sovereign and three entities (Sovereign International Asset Management, LLC ("SIAM LLC"), Florida-based Anchor Holdings, LLC ("AH Florida"), and Nevis-based Anchor Holdings, LLC ("AH Nevis") to Gregory Adams. During Grossman's ownership, Sovereign was a registered investment adviser that specialized in taking IRA and retirement plans offshore to provide Sovereign clients among other things access to international investments and foreign asset managers. Among the various investments recommended by Grossman were the Anchor Hedge Fund, FuturesOne and PIWM that the ALJ referred to as the "Battoo Funds." It is Grossman's recommendation to and placement of Sovereign clients into the Battoo Funds that serve as the basis for the Division's claims and the ALJ's findings.

During the four-day administrative hearing the ALJ received testimony from a variety of witnesses, including the following investors, James W. Davidson[1], Carmen Evarista Montes-Perkins[2], Stephen Richards[3], Margaret S. Van Dyke[4], and C.W. Gilluly, and received over 150

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[1] On August 21, 2006, Davidson signed Sovereign's Investment Advisory Agreement becoming a Sovereign client. Grossman recommendation of the Battoo Funds and Davidson's investment occurred five years before the filing of the OIP.

[2] On August 14, 2007, Montes became a Sovereign client after signing Sovereign's Investment Advisory Agreement. Grossman's recommendation and Montes investment in the Battoo Funds occurred five years before the filing of the OIP.

exhibits into evidence. On December 23, 2014, the ALJ issued her Initial Decision finding that Grossman, during his ownership of Sovereign made several materially false and misleading statements and omissions and failed to conduct adequate due diligence and investigate red flags attributable to the Battoo Funds that he recommended to Sovereign clients.

More specifically, the ALJ found that Grossman fell within the provisions of Section 17(a)(2) of the Securities Act and Sections 206(1) and 206(2) of the Investment Adviser's Act because Grossman as Sovereign's founder, managing partner, and sole owner until he sold the business in October 2008, received compensation in connection with giving investment advice.[5] Proceeding under this finding, the Initial Decision found that Grossman violated these provisions by making materially false and misleading statement and omissions to Sovereign clients regarding: (1) undisclosed referral compensation in Investment Advisory Agreements and Form ADVs regarding receipt of referral fees and consultant fees; (2) documentation provided to Sovereign clients containing patently false and misleading statements such as Grossman's statement that he offered highly personalized investment advice; (3) that the Batto Funds were "moderately conservative" or low risk; (4) depositing Sovereign client's funds into a pooled

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[3] On December 11, 2007, Sovereign presented Stephen D. Richards ("Richards") with its investment recommendations that included investments in the Battoo Funds. Richards was invested in Anchor A and Anchor C five years before the filing of the OIP.

[4] On March 11, 2008, Margaret and Thomas Van Dyke (the "Van Dykes") signed Sovereign's Investment Advisory Agreement becoming a Sovereign client. Shortly thereafter, the Van Dykes received a letter from Sovereign containing Sovereign's recommendation to invest in several investment vehicles, including Anchor Hedge Fund Class A. They executed the subscription agreement for Anchor Hedge Fund Class A and were invested in the fund five years before the filing of the OIP.

[5] In 2003, SIAM, LLC entered into referral agreements ("Referral Agreements") with Anchor Hedge Fund Limited, Futures One, and BC Capital Group from which SIAM, LLC was entitled to receive fees from these entities for placement of Sovereign clients into Anchor Hedge Funds, Futures One Fund, and PIWM ("Battoo Funds"). Grossman also entered into an International Consultant Agreement with Anchor Hedge Fund Management Limited, the Investment Manager of the Anchor Hedge Funds, in which Sovereign was paid a fee for providing advice concerning whether an IRA or a qualified plan could invest into the platform of funds.

account; (5) that the Battoo Funds were "highly diversified"; and (6) the IAA's and Forms ADV from 2003-2008 did not disclose that Sovereign took custody of its clients assets.

In addition to the material misstatements, the ALJ found that Grossman failed to conduct adequate due diligence into the Battoo Funds and failed to investigate red flags regarding such funds. In support of such finding, the ALJ found that Grossman: (1) did not perform reasonable due diligence before recommending the Anchor A and other Battoo Funds to Sovereign's clients; (2) violated his duty of care he owed to his customers by relying on PerTrac reports, one-page fund summaries, without knowing the source of the information; (3) relying on the unreliable PerTrac reports; and (4) failed to show that he performed anything approaching adequate due diligence as to the investments in which he recommended that Sovereign customers invest funds.

The Initial Decision also found that Grossman: (1) willfully violated Section 207 of the Adviser's Act by making misleading statements on Sovereign's Form ADVs; (2) willfully violated Exchange Act Section 15(a) by acting as a broker when he recommended the Batto Funds to Sovereign clients and receiving referral fees and a portion of the investment management for making such recommendations; (3) willfully violated Section 206(3) of the Advisers Act by acting as a broker selling shares of the Battoo Funds and receiving compensation for the sale to Sovereign clients while failing to provide written notice to Sovereign clients and obtain their consent before selling them the shares of the Battoo Funds; (4) willfully aided and abetted and caused violations Section 206(4) and Rule 206(4)-2 of the Advisers Act by pooling Sovereign client's funds for the Battoo Funds; (5) aided and abetted and caused violations of Rule 204-3 of the Adviser's Act, because Grossman as Sovereign's owner, sole control person and firm spokesperson, from 2003 through October 1, 2008 failed to deliver

an investment adviser brochure and supplements to each client or prospective client that contained the correct information required by Part II of Form ADV.

All of Grossman's conduct comprising the material misrepresentations and omissions, failure to conduct adequate due diligence, and failure to investigate red flags occurred during Grossman's ownership of Sovereign, that ceased on October 1, 2008, beyond §2462's five year statute of limitations. Despite all of the conduct occurring outside of the applicable statute of limitations, the ALJ found that Grossman's failure to advise Sovereign client's that he sold the business on October 1, 2008, was a violation of his fiduciary duty. The ALJ also found that the following facts supported the application of the continuing violation doctrine thereby brining Grossman's conduct within the statute of limitations period: (1) Grossman's consultancy arrangement with Sovereign its sale[6]; (2) Grossman's Investment Adviser Representative Public Disclosure Report showing Grossman as registered with Sovereign until December 31, 2011; (3) Grossman's efforts to resolve issues with Sovereign clients' Anchor A investments by notifying clients and assisting them in trying to recover their money; and (4) hiring an attorney to assist with filing claims with the Madoff receiver.

[6] As a consultant at Sovereign, Grossman did not have: (a) any decision making authority; (b) the ability to sign checks on behalf of Sovereign; (c) the ability to enter into contracts on behalf of Sovereign; and (d) any authority to file an ADV on behalf of Sovereign. In fact, Grossman did not file an ADV on behalf of Sovereign after October 1, 2008. Furthermore, his compensation as a consultant was not tied in any way to the performance of the investments managed at Sovereign.

ARGUMENT

I. THE ALJ ERRONEOUSLY FOUND THAT THE DIVISION'S REMEDIES WERE NOT BARRED BY §2462'S FIVE YEAR STATUTE OF LIMITATIONS

The five year statute of limitations under 28 U.S.C. §2462 begins to run when the claim first accrues meaning the date when the Division has a complete and present cause of action against Grossman. *Gabelli v. S.E.C.*, 133 S. Ct. 1216, 1120-21 (2013) *see also, In the Matter of Raymond J. Lucia Companies, Inc. and Raymond J. Lucia, Sr.,* SEC Release No. 540 (Dec. 6, 2013)(statute of limitations clock begins running at time of accrual, that is, when the cause of action becomes enforceable). The primary purpose of a statute of limitations is to prevent the Division from reviving claims that have been allowed to slumber until evidence has been lost, memories have faded and witnesses have disappeared. *Id.*

The findings within the Initial Decision were based upon events that occurred during Grossman's ownership of Sovereign that ended over five years before the Division filed the OIP. During the final hearing many witnesses' memories faded as to particular facts critical to Grossman's defense. For instance, the Initial Decision finds that Grossmann violated Rule 204-3 of the Adviser's Act by failing to deliver a form "to each client or prospective client that contains all information required by Part II of Form ADV." The Van Dykes and Montes, however, could not recall or inaccurately recalled whether they received Sovereign's Form ADV Part II, despite signing the Investment Advisory Agreement acknowledging receipt of such document. In addition, the Law Judge scolded Grossman for his inability to remember facts from over six years ago as follow:

> Well, could I just ask, I know you have-you don't recall a lot, but my goodness you were - you put people into these investment... I

> just don't understand your answers that you don't remember...I mean, I can see not remembering whether it rained, you know, -- three months ago. But my God, you were running a business....

The purpose of a statute of limitations is to guard against this very event where the witnesses are unable to recall certain events that occurred over six years ago. Furthermore, key witnesses, such as Battoo, have disappeared.

Another fundamental purpose in establishing the bright-line test as to when a claim first accrues under §2462 is to provide a "fixed date when exposure to the specified Government enforcement efforts ends." *Id.* 1220-21. The Division is held to a higher standard than private litigants for statute of limitations purposes, because its missions it to "protect investors and the markets by investigating potential violations of the federal securities laws." *Id.* at 1222-1224. The SEC has a plethora of "legal tools at hand to aid in [its] pursuit" including: demanding that investment advisers turn over their comprehensive books and records at any time, subpoena documents and witnesses without filing suit, and pay awards to whistleblowers, who provide information regarding securities law violation." *Id.* at 1222. Therefore, the SEC as an enforcer of the federal securities laws is a "far cry from a defrauded victim" who may enjoy equitable tolling of the statute of limitations. *Id.*

The ALJ found that §2462's statute of limitation was inapplicable to the Division's remedy of disgorgement, based on her reading of the District Court cases in support of the proposition that §2462 does not apply to equitable remedies such as cease-and-desist orders and disgorgement. The Supreme Court in *Gabelli*, however, never held that its opinion was limited to fines, penalties and forfeitures. In fact, the Supreme Court specifically held that it was not addressing the issue as to whether §2462's statute of limitations was applicable to disgorgement, because such remedy was not before the Court. Therefore, the door was left wide open as to

whether §2462's statute of limitation is applicable to the remedy of disgorgement and injunctive relief. According to the well-reasoned opinion set forth by the Supreme Court in *Gabelli* regarding the purpose of the statute of limitations and the heightened duty of the Division as the protector of investors, there is simply no plausible reason as to why disgorgement and the injunctive relief would not be subsumed into §2462's statute of limitations.

Indeed, courts before the Supreme Court's opinion in Gabelli, recognized the harsh penal effects of equitable remedies, such as officer-and-director bars, in determining that such remedies are barred by §2462's statute of limitations. *See S.E.C. v. Microtune*, 783 F. Supp. 2d 867, 884 (N.D. TX 2011) *aff'd S.E.C. v. Bartek*, 484 Fed. Appx. 949 (5th Cir. 2012)(officer-and-director bar was tantamount to a penalty due to the low likelihood that the defendant would engage in similar harm in the future) *see also Johnson v. S.E.C.* 87 F. 3d 484 (C.A.D.C. 1996). Recognizing that there is a long litany of authority (such as the authority relied upon by the Division) which automatically presumes injunctive relief is an equitable remedy, the courts in *Bartek* and *Johnson* held that the injunctive relief rose to a level of penalty thereby falling under §2462's five-year statute of limitations. Furthermore, the District Court, in the Southern District of Florida expressly held that §2462's five-year statute of limitations is applicable to all of the remedies available to the SEC. *SEC v. Graham*, 2014 WL 1891418 (S.D. Fla. May 12, 2014). The ALJ failed to make any mention of the holding in *Graham*, a decision from a court located just miles from the Division that instituted the OIP.

As a result, the ALJ found that all of Grossman's violative conduct occurred and all claims first accrued beyond §2462's limitation period, but erred in refusing to find that all of the Division's remedies against Grossman were barred.

II. THE ALJ ERRONEOUSLY APPLIED THE DOCTRINE OF CONTINUING VIOLATIONS IMPERMISSIBLY EXTENDING THE STATUTE OF LIMITATIONS.

The ALJ found erroneously found that the continuing violation doctrine allowed the ALJ to reach Grossman's beyond the statute of limitations imposed by §2462 in order to assess fines, penalties and forfeitures, because "Grossman's conduct outside and within the limitations period was part of one continuous scheme to defraud investors." The ALJ, however, was unable to identify any conduct within the statute of limitations period (after November 2008) that violated any security laws or was part of a scheme to defraud investors. The ALJ tangentially refers to Grossman's failure to advise Sovereign clients of Sovereign's sale as a breach of fiduciary duty, but even if this was a breach, the claim first accrued on the date of the sale, namely October 1, 2008, over month beyond the §2462's five year statute of limitations.

The continuing violation doctrine does not make timely claims based on discretely actionable acts occurring outside the limitations period, even if those acts are related to or part of a series of acts committed within the limitations period. *S.E.C. v. Kovzan*, 2013 WL 5651401 *2 (D. Kan Oct. 15, 2013) *citing National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 113-15 (2002) *SEC v. Kovzan*, 2013 WL 5651401* 3 (D.Kan Oct. 15, 2013)(rejecting SEC's continuing violation argument on claims based on particular misrepresentations and omissions occurring outside §2462's statute).

Essentially, "when a defendant's conduct is part of a continuing practice, an action is timely so long as the last act evidencing the continuing practice falls within the limitations period". *S.E.C. v. Leslie*, 2010 WL 2991038 *35 (N.D.Cal July 29, 2010). To the extent that the doctrine applies, "it may not be predicated on the continuing ill-effects of the original violation; rather, it requires continued unlawful acts." *Id.* at *9.

In *S.E.C. v. Leslie*, 2010 WL 2991038 *3 (N.D.Cal July 29, 2010) the SEC brought claims against the defendants for overstatement of the value of a licensing agreement between defendants and AOL in its 2001 Form 10-K causing defendants' stock price to artificially inflate. *Id* at *3. Defendants moved for summary judgment requesting as a matter of law that the remedies sought by the SEC are time barred under §2462. *Id.* at *35. The SEC argued that defendants engaged in a fraudulent scheme to inflate the share price of Veritas and the last violation, namely the sale of the stock with artificially increased price occurred within the statute of limitations period thereby tolling the statute of limitations under the continuing violation doctrine. *Id.* The Court rejected such argument holding that the continuing violation doctrine cannot be "predicated on the continuing ill-effect of the original violation; rather, it requires continued unlawful acts." *Id.* at *35. As a result, the Court held that "the sale of stock at an artificially inflated price adds to any preexisting ill-effect and that the sale of stock within the limitations period is "nothing more than the continuing ill-effect of the original violations."

The ALJ was unable to point to any continued unlawful act committed by Grossman after the sale of Sovereign or within the statutory period beginning on November 20, 2008. After the sale of Sovereign, Grossman returned as a consultant and was not giving any investment advice to any Sovereign clients. Instead, Grossman was assisting Sovereign with the operational transition of Sovereign to Adams. As a consultant at Sovereign, Grossman did not have: (a) any decision making authority, (b) the ability to sign checks on behalf of Sovereign; (c) the ability to enter into contracts on behalf of Sovereign; or (d) any authority to file an ADV on behalf of Sovereign. Grossman did not file an ADV on behalf of Sovereign after October 1, 2008. In addition, Grossman's compensation as a consultant was not tied in any way to the performance of the investments managed at Sovereign. In fact, all Grossman's violative conduct cited by the

ALJ, namely the omissions and misrepresentations, the recommendations, due diligence, failure to detect red flags, sale of Battoo Funds, and ADV and Investment Advisory Agreement disclosures all occurred during Grossman's ownership of Sovereign that is beyond §2462's statute of limitations. In fact, the Division recognized that Grossman's compensation under the Referral Agreements ceased upon the sale of the Sovereign to Adams, because it only sought disgorgement of such fees up to October 1, 2008.

As a result, the ALJ erred in concluding that the continuing violation doctrine, a doctrine that has been traditionally reserved for discrimination cases, is applicable considering that none of the alleged violative conduct occurred within the limitations period.

CONCLUSION

The ALJ erred in refusing to find that all of the Division's remedies against Grossman are barred by §2462's five year statute of limitation given that all of the violative conduct occurred five years before the filing of the OIP. The ALJ also erred in finding that the doctrine of continuing violations permitted the ALJ to reach back to Grossman's conduct occurring beyond §2462's five year statute of limitations to impose a penalty, disgorgement, cease and desist order, and industry bar upon Grossman.

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