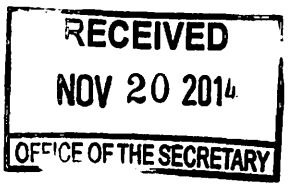
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-16013

In the Matter of

NICHOLAS D. SKALTSOUNIS,

Respondent.

RESPONDENT'S RESPONSE TO DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AND MEMORANDUM OF AUTHORITIES IN OPPOSITION THEREOF

Dated: November 18, 2014

Nicholas D. Skaltsounis
Respondent *in pro per*
[redacted]

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Pages(s)

I. INTRODUCTION

Respondent Nicholas D. Skaltsounis acknowledges the outcome of the trial in the U.S. District Court for the Eastern District of Tennessee, where in the civil action filed by the Commission, the jury returned a verdict against him, on all counts. Although he believes the jury erred in its conclusion, he understands that his reasons are a matter of an Appeal of the verdict. However, the matter of the Administrative hearing is not ripe for summary disposition as the Division of Enforcement's contends. Their motion and through it the relief they seek for a full and permanent collateral bar is based on genuine issues of fact in dispute. Respondent accordingly submits the following response:

II. LEGAL STANDARD

Under Rule 250 of the SEC Rules of Practice, the facts of the pleadings of the party against whom the motion of summary disposition is made shall be taken as true, except as modified by stipulation or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to Rule 323. The hearing officer may grant the motion, if there is no genuine issue with regard to material fact and the party making the motion is entitled to a summary disposition as a matter of law.

III. FACTS

A. The Court assumed Respondent would remain in the securities industry and did not factor a bar in arriving at its final judgment, concluding in its August 1, 2014 Memorandum Opinion that the disgorgement and permanent injunction, combined with a lesser civil penalty, would, collectively, serve as meaningful punishment and have a meaningful deterrent effect in preventing future violations.

In its Motion for Entry of Final Judgment, the Commission moved the Court to grant judgments it thought appropriate for the violations, including permanent injunctive relief against Skaltsounis. In granting the permanent injunction the court assumed Respondent would continue in the securities industry. The honorable Thomas A. Varlan of the U.S. District Court for the Eastern District of Tennessee says in his post-trial opinion:

> "The AIC defendants also argue that a permanent injunction would act as a permanent ban on Mr. Skaltsounis from participating in the securities industry; however, this question is not before the Court, and the scope of any injunction would be to enjoin Mr. Skaltsounis, and the corporate defendants, from future violations of the securities laws for which they were found to have violated. The Court thus makes no finding as to whether Mr. Skaltsounis should be banned from any future involvement in the securities industry. *See* 15 U.S.C. § 80b-3(f) (granting SEC authority to censure, suspend, or bar a member of investment adviser or securities dealer following notice and opportunity for hearing)" (Enforcement's exhibit A, page 11, footnote 5).

The Commission did not put the question of a permanent bar before the court at that time, and the Court did not factor a bar in arriving at its final judgment. Had the Court been given the opportunity, Respondent contends it would consider the bar excessive, in light of the deterrents imposed. As the Court notes in its Memorandum Opinion, page 19-20 (Enforcement exhibit A),

> "At the same time, however, other factors weigh in favor of a lesser penalty than the $5,590,000 requested by the SEC. The Court first notes that this proposed penalty is more than five times the disgorgement amount requested by the SEC, which represents the actual benefit Mr. Skaltsounis received. Unlike those cases where defendants use the proceeds of their schemes to live a 'lavish lifestyle,' *see SEC v. Zada,* 2014 WL 354502, at *4, Mr. Skaltsounis's benefits in this case merely represent his salary, dividends and interest which would have otherwise been earned in the normal course of his occupation. There is no evidence to support the conclusion that Mr. Skaltsounis's actions were so egregious, or the benefit derived from his actions so great, as to warrant a penalty which is only slightly less than the total amount of funds raised by the defendants' violations.

> In addition, the Court notes that, given the fact that Mr. Skaltsounis has never before been convicted or found liable for a violation of the securities laws, the disgorgement judgment and permanent injunction, combined with a lesser penalty, will, collectively, serve as meaningful punishment and have a meaningful deterrent effect in preventing future violations."

A full and permanent collateral bar therefore remains an unresolved and genuine issue to be heard and decided on its merits.

B. Skaltsounis has no intention to re-enter the Securities Industry and has not "repeatedly" expressed a desire to do so

Skaltsounis has been out of the Securities Industry for almost five years, and during that period not subject to a bar. If Skaltsounis were inclined to re-enter the securities industry as claimed by Enforcement, why has he not done so in almost five years? And why did he voluntarily resign from a securities firm in the spring of 2010?

Enforcement's statement in its motion that "Skaltsounis has repeatedly expressed a desire to rejoin the industry" is simply not true. The one example used to support their contention and justification for a bar is Enforcement's exhibit N, a deposition transcript where Skaltsounis says about a proposed settlement, "it would disbar me from the industry." Here they contend the quote was an indication that he desired to rejoin the industry. But the quote is taken out of context. Skaltsounis is commenting in the 2013 deposition about his sentiments in early 2010 to a proposed SEC settlement that included a bar, a time when he was still associated with a securities firm. In a timely quote in the same deposition transcript he says about the SEC Action, "it's ruined me in any vocation I want to pursue" (exhibit N, page 607, line 6). Skaltsounis refers to the difficulty he confronts in promoting his art career when search engines like Google contain erroneous statements such as "...accused Ponzi schemer,

Nicholas Skaltsounis..."[1] The latter transcript quote clearly points out that he sought another vocation.

Skaltsounis has in fact begun his career as an artist. Enforcement has known about Skaltsounis' art endeavor for well over a year. His websites at Skaltsounisfineart.com and Nicksartsite.com have been operational for some time now, and available for review. And although aware, Enforcement has been silent regarding his art career. Furthermore, over ten months have passed since the conclusion of the trial in Tennessee and the Court's Final Judgment of August 1, 2014. That period is relevant to the question of Skaltsounis' intent to re-enter and needs to be considered. His post-trial actions speak louder than a stale quote taken out of context. Indeed, Skaltsounis' occupation lacks any opportunities for future violations. The art career refutes Enforcement's claim that he intends to re-enter the securities industry. His intention to re-enter and whether he has "repeatedly expressed a desire to do so", remain questions in dispute and genuine issues to be heard.

C. That Skaltsounis "targeted the elderly and unsophisticated" is derived from Enforcement's language in its OIP and the Commission's amended complaint, and not "discussed in more detail in the district court's August 1, 2014 Memorandum Opinion" as Enforcement asserts.

Skaltsounis did not target the elderly. He acknowledges that some of the investors were over [redacted] years of age and hence [redacted] But Skaltsounis along with Guyette, and LaRue (Broker A), two of the other defendants, were over [redacted]. The fourth, Graves, was [redacted] It is reasonable for

[1] The "Ponzi Scheme" mantra arose from the commission's initial claim that Skaltsounis was engaged in such a scheme, a claim later recanted in the Commission's opening statement at trial, that "...we're not saying these were not legitimate businesses..." However, by that time it was impossible to put the internet genie back in the bottle.

them to have sought investments from individuals of their own generation. Furthermore, the Commission in its amended complaint actually says: (Enforcement exhibit I, page 3, § 6)

> "...As a result, the vast majority of AIC investors – many of who were elderly and unsophisticated investors ..."

The breakdown of over 130 AIC investors as to age and sophistication and the determination of whether in fact the elderly and unsophisticated were Skaltsounis targets remains in dispute.

IV. ARGUMENT AGAINST A FULL AND PERMANENT COLLATERAL BAR

A. Skaltsounis' new career and unlikelihood to reoffend relegate a bar to further punishment of Respondent, rather than protection of the public

Skaltsounis currently is a full-time artist, with a very modest studio, and produces both oil and acrylic paintings. His work includes landscapes, seascapes, portraits, and animal paintings. Although the art market has suffered as well in these trying economic times, he has begun marketing his work and hopes to augment his social security benefit, currently his only income. Skaltsounis finds art and participating in the securities business incompatible. So he chooses art. Even if his subsistence became dire, Skaltsounis would seek work in a more compatible field with art. He opposes the bar on principal, and as an additional punishment to those handed down by the Court in its Final Judgment, and not because he intends to re-enter the industry. In this matter the Final Judgment should be "final". Enforcement's failure to disclose Skaltsounis' art career, clearly supports the argument that their request constitutes further punishment of Skaltsounis rather than a necessary action to protect the public.

B. A full and permanent bar is inappropriate and would be an unevenly levied punishment

The findings involve Skaltsounis acting in a principal capacity for AIC, Inc., as well as AIC's subsidiaries. AIC, Inc. is an unregulated company and the subsidiaries are regulated. If a principal not associated with a regulated company, an advertising company CEO for example, had been found in his fundraising endeavors to have violated the identical laws as Skaltsounis, the Commission would rely on the permanent injunction issued by the court to assure against future violations of the securities laws he violated. With Skaltsounis however, Enforcement insists on a bar as well. Yet nothing prohibits the Commission from putting the question of a bar of an unassociated principal before a court, if the individual violated the same laws, whether or not that person had ever been associated in the securities industry, an industry they argue increases the opportunity to reoffend. So the advertising CEO is free to associate with the very same companies from which Skaltsounis is barred. An Enforcement argument that, under those circumstances, the principal would be unsuccessful in entering the securities industry, should apply equally to Skaltsounis, should he attempt to re-enter. The double standard exacts an additional penalty on Skaltsounis that is not levied on the unregulated principal.

C. The SEC, FINRA, and State Regulators have the power, without a bar, to keep Skaltsounis out of the industry, should he change his mind

Under the Maloney Act of 1938, the SEC supervises the Financial Industry Regulatory Authority (FINA), a self-regulatory organization (SRO). The SEC regulates directly, the registered investment advisors it approves. Although redundant, the states have securities laws, and regulate the securities activities within their jurisdictions. The regulators cooperate

on many overlapping matters. In short, the Commission has the power without relying on a bar to keep Skaltsounis out of the industry, furthering Respondent's claim that a bar would constitute an additional penalty.

Respondent's re-entry in the securities industry is prohibitive. Skaltsounis has never been a registered investment advisor. As president of CBS advisors, he served in a ministerial capacity. The control of the company was vested in the Executed Vice President, who was registered to exercise that authority. The SEC would have to approve him to act as an advisor. So enforcement requests a bar to re-entry to an industry respondent never entered. The same applies to other proposed barred activities.[2] As for the licenses required for engagement in his previous securities capacities, almost five years have passed since his association with a securities firm, Waterford Investor Services, Inc. So the Financial Industry Regulatory Association (FINRA) would have to approve his application (U4) to retake the several qualification examinations for registration and association. At seventy years old, Respondent does not intend to undertake that challenge. Furthermore, in reality, FINRA would be reluctant to approve Skaltsounis. The result of his trial would necessitate a special review of his U4 application and a hearing to thoroughly address all the relevant issues, and most likely to defer to the SEC for guidance. And as to the doubtful chance that he were permitted to be associated, FINRA would require a special principal at the firm to supervise his activities, following supervisory guidelines specific to Skaltsounis and his violations, and submitted to

[2] Another example of the double standard argued in "B" above where someone outside of the securities industry found to have violated the same laws as Respondent, is free to associate in those areas where Respondent is barred but never had associated or participated (municipal securities dealer, municipal advisor, transfer agent, nationally recognized statistical rating organization; in any offering of a penny stock, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance of trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock)

FINRA for approval. So the principal would approve Skaltsounis' activities to assure compliance with the scope of the Court's injunction that he not commit violations of the securities laws for which he was found to have violated.

D. Skaltsounis has a right to disagree with the verdict

Enforcement essentially says that Skaltsounis is entitled to defend against the claims as long as his defenses have a "basis in fact." (Enforcement's Motion, IV, B4, page 14) Since the verdict was unanimous, and the court dismissed other affirmative defenses on summary judgment, Enforcement says they were not. Therefore his defenses were a remorseless attempt " to deny wrongdoing and point the finger at others." It is oxymoronic to defend oneself while contritely admitting to the wrongful nature of one's conduct and making assurances against future violations. So basically, unless he prevailed with his defenses, he had no right to defend. There is more than a little *Monday morning quarterbacking* in their argument. If the jury had found for the defendant, would a similar assessment against the plaintiff's case be given any credence? Skaltsounis stands by his right to confer with counsel and rely on his advice to establish defenses to refute allegations. Juries are not infallible. Although his disagreement with the outcome of the trial is based in part on issues that should be addressed in appeal rather than in this administrative hearing. The honorable Judge Varlan says:

> "While the AIC defendants raise several arguments as to the sufficiency of the evidence, in that the jury could not have properly applied the law given the time in which they returned a verdict, the Court finds these arguments more appropriate in the context of an appeal or other request for post-trial relief, rather than in deciding, based on the jury's verdict, the appropriate relief at this juncture." (Enforcement's exhibit A, page 11, footnote 4)

Skaltsounis' post-trial posture and letter answering the Order Instituting Proceeding is, simply put, that of a defendant considering post trial relief, not the bad loser claimed by enforcement.

E. Skaltsounis is abiding by the Court's ruling

Although Skaltsounis believes that the jury was incorrect in its findings, he has never stated or insinuated that he would ignore the Court's permanent injunction. He has and will continue to abide by the Court's ruling. The Court's meaningful deterrents notwithstanding, Skaltsounis affirms that he will not commit future violations of the securities laws for which the jury found him to have violated.

IV. CONCLUSION

Genuine issues of fact remain in dispute. The Division of Enforcement's motion for summary disposition and the relief sought should be denied, and the issues heard and decided on their merits.

Respectfully submitted,

Dated: November 18, 2014

Nicholas D. Skaltsounis

Nicholas D. Skaltsounis
Respondent *in pro per*
[redacted]