UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16104

In the Matter of

MICHAEL LEE MENDENHALL

Respondent.

DIVISION OF ENFORCEMENT'S RESPONSE TO RESPONDENT'S MOTION FOR A 120 DAY EXTENSION OF TIME TO RESPOND TO THE DIVISION'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT

The Division of Enforcement ("Division") respectfully submits the following response to Respondent Michael Lee Mendenhall's ("Respondent"), request for a 120 day extension to respond to the Division's Motion for Summary Disposition.

I. Preliminary Statement

Respondent waited five weeks before filing a motion seeking an additional 120 days to respond to the Division's Motion for Summary Disposition. Clearly this is a delay tactic. Respondent has known about this proceeding for over three months and the Division's Motion for over a month. The request for an additional 120 days would exceed the time allowed by the OIP to issue the initial decision. Therefore, the Motion should be denied.

II. Argument

A. The Motion for Extension Should be Denied

The Order Instituting Administrative Proceedings ("OIP") was filed on September 12, 2014. The Division moved for Summary Disposition on December 12, 2014. The Respondent filed a response to the Division's Motion for Summary Disposition on January 16, 2015. His response requests an additional 120 days in order to "obtain legal representation." However, the OIP was served no later than October 2, 2014. As such, Respondent has known about this proceeding for over three months. He has known about the Division's Motion for Summary Disposition since December 12, 2014, over five weeks.

The OIP provides that the Administrative Law Judge's initial decision is due on April 30, 2015. Respondent's request would make his response due May 21, 2015, which clearly exceeds the time limit for the initial decision. As such, the Division objects to the Respondent's motion for extension.

B. The Undisputed Facts Establish the Statutory Bases for a Bar

Section 15(b)(6) of the Securities Exchange Act of 1934 ("Exchange Act") authorizes the Commission to bar a person from being associated with a broker or dealer if the person has been convicted of an offense specified in Exchange Act Section 15(4)(B)(i), the criminal offense occurred while the person was associated with a broker or dealer, and such sanctions are in the public interest. 15 U.S.C. § 78o(b)(6). Similarly, Section 203(f) of the Advisers Act of 1940 ("Advisers Act"), authorizes the Commission to bar a person from being associated with an investment adviser if the person has been convicted of any offense specified in Section 203(e)(2)(A), if the criminal offense occurred while the person was associated or seeking to become associated with an investment adviser, and such sanctions are in the public interest. 15 U.S.C. § 80b-3 (all as amended under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act")).[1]

The Dodd-Frank Act further broadened the bars in these sections, enabling the Commission to authorize bars from associating with any investment adviser, broker, dealer, municipal securities dealer, municipal adviser, transfer agent, or Nationally Recognized Statistical Rating Organization (NRSRO) for a violation enumerated in Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act, (hereinafter "industry-wide collateral bar"). This industry-wide collateral bar is available prospectively under the securities laws and is not impermissibly retroactive. *Ross Mandell,* Release No. 71668, 2013 WL 30144 (Jan. 3, 2013), *aff'd, Ross Mandell,* 2014 WL 907416 (March 7, 2014); *John W. Lawton,* Release No. 3513, 105 SEC Docket 61722, 61737, 2012 WL 6208750 (Dec. 13, 2012).

[1] The Dodd-Frank Act is Pub. L. No. 111-203, 124 Stat. 1376 (2010).

On March 2, 2012, Respondent was convicted of 17 counts of securities fraud in violation of Colo. Rev. Stat. § 11-51-501, and eight counts of theft in violation of Colo. Rev. Stat. § 18-4-401, both class three felonies. *See People v. Michael Lee Mendenhall,* Case No. 2011CR10094, *See* Division's Request for Official Notice in Support of Motion for Summary Disposition, Exh. 1, (Verdict and Sentencing Docket).[2] On April 20, 2012, Respondent was sentenced to 30 years in prison, and ordered to pay $1,408,667.77 in restitution. *Id.*

Respondent was associated with Bankers Life and Casualty starting in 1983. *See* Exh. 2, (IARD, p. 4). Thereafter, he became associated with U-VEST Financial Services Group, Inc., which was a broker-dealer and investment adviser registered with the Commission, from June 2005 to November 2009. *Id.* He was associated with Colorado Financial Service Corporation, a broker-dealer registered with the Commission, from January 2010, until October 2010. *Id.* The dates of Respondent's offenses spanned from April 13, 2006 to November 2010, while he was an associated person. *See* Exh. 6, p. 2 (respondents' Opening Brief in *People v. Michael Mendenhall,* Case No. 12CA1171, Court of Appeals, State of Colorado.)

As explained in the Division's Memorandum in Support of Summary Disposition, the public interest factors set forth in *Steadman v. SEC,* 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981), establish that Respondent's conduct was egregious, repeated, and conducted with a high degree of scienter, showing a risk of future harm to the public. An industry-wide collateral bar is necessary and appropriate to protect investors and markets. *John W. Lawton,* Release No. 3513, 2012 WL 6208750, at *13 (Dec. 13, 2012).

C. Respondent Cannot Collaterally Attack His Verdict

Respondent does not (and cannot) deny his conviction. Respondent may not use this administrative proceeding to collaterally attack the judgment of the court in the underlying

[2] Hereafter Exh. ____.

proceeding. *See Kornman v. SEC,* 592 F.3d 173, 187 (D.C. Cir. 2010) (recognizing Commission ruling that respondent was estopped from making "mitigation arguments" that were "essentially collateral attacks on his conviction"); *Elliot v. SEC,* 36 F.3d 86, 87 (11th Cir. 1994) (refusing to entertain a collateral attack in a follow-on proceeding); *Blinder, Robinson & Co. v. SEC,* 837 F.2d 1099, 1108 (C.D. Cir. 1988) ("[A]n attack on the validity of [an underlying] proceeding" that could have been raised in the earlier proceeding is "doomed to fail"); *James E. Franklin,* Release No. 56649, 2007 WL 2974200, at *4 & n. 13 (Oct. 12, 2007) (Franklin is collaterally estopped from challenging in this administrative proceeding the decisions of the district court in the injunctive proceeding."), *pet. denied*, 285 F. App'x 761 (D.C. Cir. 2008); *In the Matter of Charles Trento,* Release No. 49296, 2004 WL 329040, at *2 (Feb. 23, 2004) ("[I]t is well established that a respondent may not collaterally attack his criminal conviction in administrative proceedings before this Commission.").

D. Respondent May Seek Modification of Any Sanction Imposed by this Proceeding if his Conviction is Overturned

Respondent is appealing his conviction. If Respondent successfully overturns the criminal conviction on appeal, he may seek modification of any sanctions imposed by this proceeding. *In the Matter of Ross Mandell*, 2014 WL 907416, *5, n. 28, *citing Jimmy Dale Swink, Jr.*, Release No. 36042, 59 SEC Docket 2386, 1995 WL 467600, *2 (Aug. 1, 1995) (vacating findings and administrative bar order when an appellate court reversed the criminal conviction that was the basis for the proceeding); *In the Matter of Kenneth E. Mahaffy, Jr.* Release No. 3517, 105 SEC Docket 893, 2012 WL 6608201, *1 (Dec. 18, 2012) (order vacated once criminal conviction was vacated).

III. Conclusion

For the foregoing reasons, the Respondent's Request for an Extension should be denied and the Division's requests for an industry wide collateral bar should be entered.

Respectfully submitted this 21st day of January, 2015.

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