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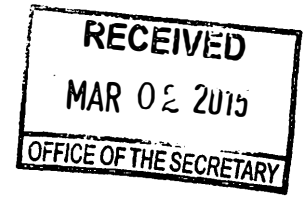
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-16274

In the Matter of

Gregory Viola,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSTION

The Division of Enforcement ("Division"), pursuant to Rule 250 of the Commission Rules of Practice, 17 C.F.R. § 201.250, and with leave of the Administrative Law Judge ("ALJ") granted December 17, 2014, hereby moves for summary disposition against Respondent Gregory Viola ("Viola"). All facts necessary for summary disposition have been previously resolved through criminal proceedings that culminated in Viola's guilty plea and criminal conviction. The Division therefore asserts that summary disposition is appropriate in this matter and respectfully requests that the Court issue an Order, pursuant to § 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), barring Viola from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (a "collateral industry bar").

As more fully explained below, Viola was charged on February 1, 2012 by criminal information in the District of Connecticut with two counts of mail fraud for his alleged perpetration

of an investment mail fraud scheme from 2007 through 2011.[1] After waiving indictment, Viola pleaded guilty on February 1, 2012 to two counts of mail fraud and, on October 5, 2012, was sentenced, among other things, to 100 months of imprisonment. Viola has appealed his conviction and sentencing and, on February 3, 2015, filed a motion for a new trial.

PROPOSED FINDINGS OF FACT

Viola Background

1. From at least approximately 1999 to July 2011, Viola, age 62, worked as a tax return preparer and conducted an investment business out of his home in Orange, Connecticut. [Order Instituting Proceedings ("OIP") ¶ A.1 (Admitted in Respondent's Answer); Moynihan Decl. Ex. A.]. He never registered with the State of Connecticut as an investment adviser and has never been registered with the Commission as an investment adviser or in any other capacity. [Order Instituting Proceedings ("OIP") ¶ A.1 (Admitted in Respondent's Answer)].

Criminal Action Against Viola

2. On February 1, 2012, Viola pleaded guilty to two counts of mail fraud in violation of Title 18 United States Code, Section 1341 before the United States District Court for the District of Connecticut, United States v. Viola, Case No. 3:12-cr-25 (D. Conn), *aff'd*, 555 Fed. Appx. 57 (2d Cir. 2014), *cert. denied*, 190 L. Ed. 2d 389 (2014). [Waiver of Indictment/Guilty Plea, Moynihan Decl.Ex. B; OIP , at B.2. (Admitted in Respondent's Answer)] On October 5, 2012, Viola was sentenced to 100 months of imprisonment, followed by three years of supervised release, and was ordered to pay restitution in the amount of $6,872,633.97. [Judgment in U.S. v. Viola, Moynihan Decl., Ex. C; OIP , at B.2. (Admitted in Respondent's Answer)].

[1] A true and accurate copy of the February 2, 2012 Criminal Information is attached as Exhibit A to the Declaration of Ellen Bober Moynihan in Support of Division of Enforcement's Motion for Summary Disposition ("Moynihan Decl."), filed herewith. True and accurate copies of additional documents are also attached as Exhibits B-D to Moynihan Decl.

3. Viola solicited prospective investments by representing to his tax preparation clients and other persons that he could invest and maintain their funds in a separate account and that he could generate a significant return on the investments. [Moynihan Decl. Ex. A., ¶ 2]. Viola represented to some investors that he would provide them with dividends of at least 8% to 10% per year. [*Id.*]

4. In an effort to solicit investors to provide funds to him, Viola made false representations that each investor's funds would be maintained in a separate account, whereas Viola commingled investors' funds with other investors' funds and funds in his own bank accounts. [Moynihan Decl. Ex. A., ¶ 4].

5. In an effort to provide a false sense of security to his investors, Viola provided some of his investors with materials he signed on the letterhead of a financial institution to create the false impression that Viola was soliciting investments on behalf of the institution and that the investments were insured by the institution. [Moynihan Decl. Ex. A, ¶ 5]. In fact, Viola knew that he was not accepting funds on behalf of the institution and the institution was not insuring the investments. [*Id.*]

6. In an effort to keep the fraudulent scheme going, Viola routinely used new investors' funds to pay dividends and redemptions to earlier investors. [Moynihan Decl. Ex. A., ¶ 6].

7. As of May 2011, Viola had falsely represented that he had more than $10 million in total invested in separate accounts on behalf of more than 50 investors. [Moynihan Decl. Ex. A., ¶ 7]. While Viola represented to his investors that their funds were invested, Viola did not invest or maintain the funds as he represented. [*Id.*]

8. In an effort to lull investors and to convince them that their investments had generated a significant return, Viola generated fraudulent monthly statements that purported to show that investors' funds were currently invested and had significantly appreciated in value, whereas the funds were not currently invested and no such appreciation had occurred. [Moynihan Decl. Ex. A., ¶ 8].

9. In furtherance of his scheme to defraud investors, Viola mailed the fraudulent monthly statements to his investors. These fraudulent statements falsely represented in some cases that investors had separate accounts at E-TRADE, whereas no such separate accounts existed. [Moynihan Decl. Ex. A., ¶ 9].

10. Viola billed some investors for the investment services he purportedly rendered by requiring investors to pay a percentage of the principal that each investor purportedly had under Viola's management. In fact, the percentage Viola charged some investors was much greater than the percentage represented since the represented principal was fraudulently inflated. [Moynihan Decl. Ex. A., ¶ 10].

11. From in or about 2007 to in or about July 2011, Viola used investors' funds to pay his own personal expenses, including the mortgage on his Orange home, and to pay promised dividends to other investors. [Moynihan Decl. Ex. A., ¶ 11].

12. Through his fraudulent conduct, Viola defrauded investors of at least $2.5 million. [Moynihan Decl. Ex. A., ¶ 9].

ARGUMENT

Summary Disposition is appropriate in this case

A motion for summary disposition should be granted if there is "no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition

as a matter of law." [Rule 250(b).] The Commission has repeatedly upheld use of summary disposition in cases such as this, where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction. *See In the Matter of Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *40-41 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010); *In the Matter of Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at *19-20 & n.21 (Feb. 4, 2008) (collecting cases), *pet. denied*, 561 F.3d 548 (6th Cir. 2009). Under Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate "will be rare." *In the Matter of John S. Brownson*, 55 S.E.C. 1023, 1028 n.12 (2002), *pet. denied*, 66 F. App'x 687 (9th Cir. 2003). Because there is no genuine issue of material fact in this matter, the Division is entitled to a permanent collateral industry bar. The Division respectfully requests that the Court grant this motion and impose such a bar on Viola.

Viola's conviction is the basis for imposition of a collateral industry bar

Advisers Act 203(f) authorizes the Commission to impose a full collateral bar against Viola, if: (1) at the time of the alleged misconduct, he was associated with an investment adviser; (2) has been convicted, within 10 years of the commencement of administrative proceedings, of any offense specified in paragraph (2) or (3) of Advisers Act 203(e), which include (a) a violation of, among other provisions, Section 1341 of 18 U.S.C. § 1341; and (b) any felony or misdemeanor involving the purchase or sale of any security, the misappropriation of funds or securities; and (3) the sanction is in the public interest. 15 U.S.C. § 80b-3(f). Viola's conduct and criminal conviction satisfy the requirements of Advisers Act § 203(f), and the Commission is therefore authorized to impose a full collateral bar against him.

Viola acted as and was associated with an unregistered investment adviser

During the period of Viola's misconduct, he was, although not registered with the Commission or the State of Connecticut or any other state, acting as an unregistered investment adviser and was, as owner of his investment business, associated with an investment adviser. Advisers Act § 202(a)(11) defines an investment adviser as "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities." The Commission's OIP alleges that Viola pleaded guilty to a Criminal Information alleging that he: "while conducting an investment business, knowingly and willfully devised a fraudulent scheme and artifice whereby he obtained funds from investors by means of materially false and fraudulent pretenses, representations and promises that included telling investors he would invest their funds and help generate significant returns on their investments." [OIP, at ¶ B.3.] Viola admitted the Commission's allegations in his Answer to the OIP. In his Answer to ¶ B.3. of the OIP, Viola further admitted that "[w] hen pleading guilty to mail fraud before the Court on February 1, 2012, Viola admitted he told investors he would manage their funds entrusted to him, charged them asset-based fees, and gave them false brokerage account statements showing their funds invested in stocks." Although Viola denied in his Answer that he acted as an unregistered investment adviser in connection with his investment business, by admitting in his Answer the allegations in ¶ B. 3. of the OIP, Viola conceded that he received compensation while engaged in the business of advising others as to the advisability of investing in, purchasing, or selling securities – the factors required under Advisers Act §202(a)(11) to establish that he acted as an investment adviser. Because Viola, at the time of his misconduct, acted as an investment adviser,

and, as owner of his investment business, was associated with an investment adviser, the first prong necessary for the imposition of a full collateral bar under Advisers Act § 203(f) is satisfied.

Viola was criminally convicted of offenses enumerated in Advisers Act §203(f)

The second requirement for the imposition of full collateral bars under Adviser Act §203(f) is satisfied here as well. As indicated above, Viola pleaded guilty to two counts of mail fraud in violation of Section 1341 of 18 U.S.C. § 1341, one of the specifically enumerated offenses covered by Advisers Act 203(f). In addition, the conduct that led to Viola's felony conviction for mail fraud involved the purchase or sale of securities. Viola admitted during his plea hearing that represented to investors that the funds they entrusted him to invest on their behalf were used to purchase stocks that were held in accounts at E*Trade in their names. [Waiver of Indictment/Guilty Plea, Moynihan Decl.Ex. B at 46-47; *See also*, Viola Answer to OIP ¶ B. 3]. Viola further admitted at his plea hearing that he sent investors bogus E*Trade statements purporting to reflect their ownership in the stocks he had purchased on their behalf. [*Id.*]. Finally, Viola's crimes involved the misappropriation of funds or securities. Viola admitted during his plea hearing that he commingled investor funds with his own and deposited them in his own bank accounts [Moynihan Decl.Ex. B at 41], thereby misappropriating them for his own use.

Viola asserted in his Motion for More Definite Statement Pursuant to Rule 220(d) that these administrative proceeding are premature in light of his apparent Motion to Vacate Sentence pursuant to 28 U.S.C. § 2255. After multiple unsuccessful appeals, Viola also filed a Motion for New Trial in connection with the criminal case against him on February 3, 2015. [Motion for New Trial, Moynihan Decl. Ex. D]. The pendency of an appeal or motion for a new trial, however, is neither grounds to postpone resolution of a follow-on proceeding, nor a mitigating factor in determining sanctions, even where the respondent has been granted bail pending appeal. *Ross*

Mandell, Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *21 n.28 (Mar. 7, 2014); *see also Ira William Scott*, 53 S.E.C. 862, 865 n.8 (1998) ("We need not await the outcome of any post-conviction proceeding in order to proceed."); *Charles Phillip Elliott*, 50 S.E.C. 1273, 1277 n.17 (1992), *aff'd*, 36 F.3d 86, 87 (11th Cir. 1994) ("Nothing in the statute's language prevents a bar to be entered if a criminal conviction is on appeal" The remedy, if Viola is granted a new trial and prevails, such that the statutory basis for the bar is no longer present, is to petition the Commission for reconsideration of this proceeding. *See Jilaine H. Bauer, Esq.*, Securities Act of 1933 (Securities Act) Release No. 9464, 2013 SEC LEXIS 3132 (Oct. 8, 2013); *Richard L. Goble*, Exchange Act Release No. 68651, 2013 SEC LEXIS 129 (Jan. 14, 2013); *Jon Edelman*, 52 S.E.C. 789, 790 (1996) ("If [Respondent] succeeds in having his conviction vacated, he can then apply to us for reconsideration of any sanctions imposed in the administrative proceeding.").

A full collateral bar is in the public interest

Any sanctions imposed pursuant to Advisers Act 203(f) must be in the public interest. A full collateral bar against Viola is an appropriate sanction and is in the public interest. *Steadman v. SEC* sets forth the public interest factors guiding what remedial sanction is appropriate. Those factors are: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood of future violations. 603 F.2d 1126, 1150 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Gary M. Kornman*, Exchange Act Release No. 59404 (Feb. 13, 2009); 2009 WL 367635, *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010); *Aaron Jousan Johnson*,

Release No. 608, 2014 WL 2448901 (June 2, 2014). No one of the *Steadman* factors is dispositive. *Kornman v. SEC*, 592 F.3d 173, 181.

Here, the *Steadman* factors weigh heavily in favor of full collateral bars against Viola. To begin with, Viola's actions were extremely egregious. He defrauded more than 50 investors out of millions of dollars – the Court in the criminal case against Viola ordered him to pay restitution of almost $7 million. In carrying out his elaborate fraudulent scheme, Viola went to extraordinary lengths to persuade investors to entrust him with their money and to discourage them from withdrawing funds from his control, including creating bogus monthly brokerage statements for his clients purporting to show the stocks that he had purchased on their behalf. [Waiver of Indictment/Guilty Plea, Moynihan Decl.Ex. B at 46-47].

Viola's conduct was also recurrent, spanning at least 4 years, and would likely have continued if his crimes had not been uncovered. [*Id.* At 40]

Viola has not recognized the wrongfulness of his conduct nor provided assurances against future violations. He offered no apologies or expressions of remorse at his plea hearing [*See* Moynihan Decl.Ex. B]. To the contrary, Viola, his guilty plea notwithstanding, is now seeking a new trial that he argues will vindicate him. [Moynihan Decl. Ex. D at 1-2] He claims that his investors actually benefitted financially from his conduct and goes so far as to assert defiantly that "[t]his was certainly not a Ponzi scheme, but an embarrassed friend trying to keep solvent other friends." [*Id.* At 9]. Viola has also claimed that he was a victim of an elaborate conspiracy on the part of the government prosecutors and his defense counsel. [*See, e.g., Id.* at 10-11]. Viola's dramatic disavowal of his guilty plea, as evidenced by his recent claims, indicates a high likelihood of future violations if Respondent is not permanently barred.

The Commission also considers the deterrent effect of administrative sanctions. *See Schield Mgmt. Co.*, Exchange Act Release No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 862 & n.46. Industry bars have long been considered effective deterrence. *See Guy P. Riordan*, Exchange Act Release No. 61153 (Dec. 11, 2009), 97 SEC Docket 23445, 23478 & n.107 (collecting cases). In this case, a permanent, collateral bar will provide such deterrence.

All of the foregoing supports the imposition o of a permanent associational bar, including all collateral bars, against Viola.

CONCLUSION

For the reasons stated above, the Division respectfully requests that the Court grant the Division Summary Disposition in its favor and grant permanent collateral bars, against the Viola.

Respectfully submitted,

DIVISION OF ENFORCEMENT

By its attorneys,

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