ORIGINAL

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16335

In the Matter of

DUANE HAMBLIN SLADE,

Respondent.

MOTION BY DIVISION OF ENFORCEMENT FOR SUMMARY DISPOSITION AGAINST RESPONDENT DUANE HAMBLIN SLADE PURSUANT TO COMMISSION RULE OF PRACTICE 250

INTRODUCTION

The Division of Enforcement ("Division") moves, pursuant to Rule 250 of the Commission's Rules of Practice, for summary disposition against Duane Hamblin Slade ("Respondent" or "Slade"). The Division requests that Slade be barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act").

PROCEDURAL BACKGROUND

On January 13, 2015, the Securities and Exchange Commission ("Commission") issued an Order Instituting Administrative Proceedings ("OIP") against Respondent pursuant to Section 203(f) of the Advisers Act to determine what, if any, remedial action is appropriate in the public interest. On January 21, 2015, the Division also served Respondent by USPS Certified Mail with a letter offering the Division's investigative files for inspection and copying pursuant to Rule of Practice 230. Buckhalter-Honore Dec., Ex. 1 (Letter dated January 21, 2015). At a telephonic prehearing conference held February 11, 2015, the Administrative Law Judge found that service of the OIP was completed on January 21, 2015, and ordered that Respondent's Answer was due by February 13, 2015, and, *sua sponte*, granted an extension of time for Respondent to Answer until February 20, 2015. February 11, 2015 Order Following Prehearing Conference (the "February 11 Order"). The Administrative Law Judge also set a briefing schedule for motions for summary disposition.

The Division received a handwritten letter dated February 15, 2015 from Respondent, addressed to the Division and to the Administrative Law Judge, in which Respondent denied "the

allegations presented in the letter dated July 18, 2014 stating that I committed mail and wire fraud." Buckhalter-Honore Dec., Ex. 2 (Letter received from Respondent dated February 15, 2015 ("February 15 Letter")).[1] It is not completely clear whether Respondent intended the February 15 letter as his Answer in this case, but in light of the denials contained in it, the Divisions assumes as much. [2] Respondent also requested that the Administrative Law Judge consider a temporary suspension over a lifetime bar. *Id.*

STATEMENT OF FACTS

From at least 2002 to 2005, Respondent was associated, as a managing director and control person, with Mathon Management Company, LLC ("Mathon"), a company that was registered with the Commission as an investment adviser from March 2, 2004 until its registration was canceled in February 2011. Declaration of Melissia A. Buckhalter-Honore ("Buckhalter-Honore Decl."), Ex. 3 (Central Registration Depository ("CRD") Report, U4 Employment History regarding Duane Hamblin Slade); Ex. 4 (Investment Advisers Registration Depository ("IARD") Report regarding Mathon) at 3-4, Ex. 5 (Feb. 6, 2004 Initial Form ADV) at 18-19, and Ex. 6 (Jan. 28, 2005 Amendment to Form ADV) at 18-19. Mathon's fraudulent operations described below were halted on April 5, 2005, when a receiver was appointed over it by the Maricopa County Superior Court, in an action brought by the Arizona Corporation Commission. *See* Buckhalter-Honore Decl., Ex. 7 (Order Appointing Receiver).

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[1] Respondent is apparently referencing the July 18, 2014 letter sent to him by the Division prior to the institution of these proceedings, advising him of the staff's intention to recommend commencing this proceeding, a so-called "Wells notice."

[2] Despite the denials contained in the February 15 Letter, the Respondent cannot challenge the validity of his conviction during these proceedings, as the Commission does not permit criminal convictions to be collaterally attacked in its administrative proceedings. See Joseph P. Galluzzi, 55 S.E.C. 1110, 1115-16 (2002) ("[A] party cannot challenge his injunction or criminal conviction in a subsequent administrative proceeding."); William F. Lincoln, 53 S.E.C. 452, 455-56 (1998); *Ira William Scott*, Advisers Act Release No. 1752, 1998 SEC LEXIS 1957, at *8-9 (Sept. 15, 1998).

Respondent was indicted on December 2, 2009 on one count of conspiracy to commit mail fraud and wire fraud in violation of 18. U.S.C. Section 1349; four counts of mail fraud in violation in violation of 18 U.S.C. Section 1341; thirteen counts of wire fraud in violation of 18 U.S.C. Section 1343; and twenty-two counts of transactional money laundering in violation of 18 U.S.C. Section 1957(a). Buckhalter-Honore Decl., Ex. 8 (Indictment in *United States v. Duane Hamblin Slade*, CR 09-01492-001-PHX-ROS (D. Ariz.) ("Slade Indictment")). Respondent ultimately pleaded guilty to count one of the indictment, Conspiracy to Commit Mail and Wire Fraud in violation of 18 U.S.C. Section 1349. Buckhalter-Honore Dec., Ex. 9 ("Slade Plea Agreement").

As part of his agreement to plead guilty, Respondent admitted that the following facts, among others, were true:

- Respondent and one of his co-defendants in the criminal case, "started the Mathon Fund I ('MFI') and its manager, Mathon Management Company ('MMC')." *Id.* at 6.
- Mathon's stated business purpose was to make raise funds from investors and use those funds to make loans to third-party borrowers. *Id.* at 6-7.
- As a high percentage of the loans to third parties began to default, Respondent and a co-defendant used funds from new Mathon investors to pay off previous investors' loans. *Id.* at 7.
- Investors were misled because the contracts implied that the only way they would be repaid was if the underlying investment (*i.e.*, loan to a third party) was satisfied. *Id.*
- Respondent told some investors that the source of funds was the repayment of principal and interest by the underlying borrower. *Id.*
- Respondent and two co-defendants "started a successor fund called the Mathon Fund ('MF')," which operated from December 2003 to April 2005, during which period

Respondent and two of his co-defendants "continued using money from new investors to pay off old investors, generally without disclosing this arrangement to either party. *Id.*

- Respondent had "direct knowledge that new investor money was being used to pay earlier investors, that MFI's default rate were [sic] very high, and that misrepresentations were being made to investors about these (and other) topics." *Id.*

Apparently undeterred by the action brought by the Arizona Corporation Commission or the appointment of a receiver, which shut down the Mathon fraud, Respondent engaged in a separate fraud, which also resulted in his criminal prosecution. In that separate case, Respondent was the subject of an indictment which included thirty-seven counts of wire fraud, among other violations. Buckhalter-Honore Decl., Ex. 10 (Indictment in *United States v. Duane Hamblin Slade*, CR-13-00460-PHX-ROS (D. Ariz.) ("*Slade II* Indictment"). Respondent pleaded guilty in this case as well and admitted to facts which are remarkably similar to the fraud he admitted in the Mathon-related criminal case. Buckhalter-Honore Decl., Ex. 11 ("*Slade II* Plea Agreement"). Respondent again claimed he could generate returns for investors by making loans to third parties, but again his representations were false. Respondent admitted that one of those third-party borrowers to whom he claimed to be loaning money "was a fictitious individual that [he] created to defraud" the investors, and he also admitted to fabricating numerous documents in furtherance of the fraud. *Id.* at 6-7. He also admitted to falsely claiming to be making another high interest loan secured by valuable vehicles, and that the vehicles were either non-existent or far less valuable as collateral than he had represented. *Id.* Respondent admitted to falsifying his own purported financial statements and forging other documents, and having a "straw person" pretend to be the borrower on telephone calls with the investors. *Id.* at 7-8. He also admitted to retaining the investors' funds for himself, rather than making the purported loans. *Id.*

On September 30, 2013, the court entered a judgment in the Mathon-related case sentencing Respondent to 180 months in prison, followed by three years of supervised release. Buckhalter-Honore Dec., Exhibit 12. In an amended judgment, the court ordered that Respondent also pay restitution in the amount of $32,965,166.43. Buckhalter-Honore Dec., Ex. 13 (Amended (to reflect the restitution amount as ordered by the Court on December 30, 2013) Judgment in a Criminal Case).

On September 30, 2013, the court in *Slade II* entered judgment against Respondent, and sentenced him to 180 months incarceration followed by three years supervised release. Buckhalter-Honore Decl., Ex. 14 (*Slade II* Judgment in a Criminal Case)[3]. On January 9, 2014, the court entered an amended judgment also imposing $2,520,000.00 in restitution. Buckhalter-Honore Dec., Ex. 15 (*Slade II* Amended (to reflect the restitution amount as ordered by the Court on January 9, 2014) Judgment in a Criminal Case).

ARGUMENT

A. Summary Disposition is Appropriate

Rule 250(a) of the Commission's Rules of Practice permits a party to move "for summary disposition of any or all allegations of the order instituting proceedings" before hearing with leave of the hearing officer. 17 C.F.R. § 201.250(a). Rule 250(b) provides that a hearing officer may grant a motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b); *see also In the Matter of Kent D. Nelson,* S.E.C. Release No. 371,

[3] The plea agreements from the two cases imposed an aggregate cap of 15 year (180) month cap; as a result, although he was sentenced to the full fifteen years in each separate case, the sentences are concurrent.

2009 WL 454556 at *1 (Initial Decision February 24, 2009) (citing 17 C.F.R. § 201.250(b)).

Moreover, it is well-established that:

> By analogy to Rule 56 of the Federal Rules of Civil Procedure, a factual dispute between the parties will not defeat a motion for summary disposition unless it is both genuine and material. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). Once the moving party has carried its burden, 'its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.' *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The opposing party must set forth specific facts showing a genuine issue for a hearing and may not rest upon the mere allegations or denials of its pleadings.

Nelson, 2009 WL 454556 at *2.

Summary disposition is appropriate here based on Respondent's guilty plea and subsequent felony conviction in the criminal proceeding *United States of America v. Duane Hamblin Slade*, CR 09-01492-001-PHX-ROS (D. Ariz.). There is no genuine issue with regard to any material fact, and, pursuant to Section 203(f) of the Advisers Act, the Division is entitled, as a matter of law, to an order permanently barring Respondent from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, and nationally recognized statistical rating organization. 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 Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *3, *10-11 (Feb. 13, 2009), *petition denied*, 592 F.3d 173 (D.C. Cir. 2010); *Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at *5-6 & nn.21-24 (Feb. 4, 2008) (collecting cases), *petition 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." *John S. Brownson*, Exchange Act Release No. 46161, 2002 WL 1438186, at *2 n.12 (July 3, 2002), *petition denied*, 66 F. App'x 687 (9th Cir. 2003).

B. Respondent's Felony Criminal Conviction Provides the Basis for Administrative Relief

Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") authorizes the Commission to, among other things, bar a person associated with an investment adviser at the time of the alleged misconduct from association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, if such sanctions are in the public interest and the person has been convicted of certain crimes described in Section 203(e). 15 U.S.C. § 80b-3(f).[4]

Here, there is no question that, at the time of his misconduct, Respondent was associated with Mathon, which was a registered investment adviser. Buckhalter-Honore Decl., Ex. 3 (CRD Report, U4 Employment History regarding Duane Hamblin Slade), Ex. 4 (IARD Report regarding Mathon) at 3-4, Ex. 5 (Feb. 6, 2004 Initial Form ADV) at 18-19, and Ex. 6 (Jan. 28, 2005 Amendment to Form ADV) at 18-19. Likewise, there can be no question that the crime of which Slade was convicted is among those which provide a basis for a bar from the securities industry. Respondent was convicted of a violation of 18 U.S.C. § 1349, a crime punishable by imprisonment for 1 or more years, as set forth in Section 203(e)(3)(A), and his convictions arose out of the business of an investment adviser, as set forth in Section 203(e)(2)(B). 15 U.S.C. § 203(e)(2). Therefore the only question remaining on this Motion is whether barring Respondent from the securities industry is in the public interest.

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[4] The criminal conduct giving rise to Slade's conviction occurred prior to the 2010 enactment of Section 925 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which authorized bars from associating in capacities other than those in which the respondent was associated at the time of the violative conduct. However, these collateral bars are available as prospective remedies under the securities laws and are not impermissibly retroactive. *In the Matter of John W. Lawton*, Release No. 3513, 2012 WL 6208750, at *10 (Commission Opinion Dec. 13, 2012).

B. The Imposition of a Bar against Respondent Is in the Public Interest

In determining whether an administrative sanction is in the public interest, the Commission considers the following factors: (1) the egregiousness of a respondent's actions; (2) the isolated or recurrent nature of the infractions; (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 the respondent's occupation will present opportunities for future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979); *In the Matter of Toby G. Scammell*, Release No. 3961, 2014 WL 5493265, at *5 (Commission Opinion, Oct. 29, 2014). Here, the *Steadman* factors weigh heavily in favor of imposing a permanent bar from associating with any entity in the securities industry as to Respondent. As the Commission recently reiterated, "[f]idelity to the public interest requires a severe sanction when a respondent's misconduct involves fraud because the securities business in one in which opportunities for dishonesty recur constantly." *Toby G. Scammell*, 2014 WL 5493265, at *5.

First, Respondent's conduct was egregious. According to the facts he admitted in pleading guilty, Slade induced investors to invest funds with false promises that he and others could earn high-yield rates of return by making short-term, high-interest hard money loans to borrowers, which generated the returns to be paid to investors. Buckhalter-Honore Dec., Ex. 9 (Slade Plea Agreement) at 6-8. In addition, (1) Respondent was the mastermind behind the Mathon Fund I, one of the fraudulent funds set up to collect funds from investors; (2) Respondent knew that this fund's default rate was very high; (3) Respondent had direct knowledge of the misrepresentations being made to investors about the Mathon Fund I and other fraudulent funds based upon discussions between he and other Mathon employees, auditors,

emails, phone conversations, and meetings; and (4) Despite having knowledge of the fraudulent scheme, Respondent continued the Ponzi scheme. *Id.* According to the District Court in the underlying criminal action, Respondent's conduct constituted a "serious crime with effects on a lot of people." Buckhalter-Honore Decl., Ex. 16, Transcript of Respondent's Sentencing Hearing ("Sentencing Transcript") at 89. The scope and severity of the fraud is made also made obvious by the imposition of a restitution order against Slade of over $32 million. The Court described Slade's conduct by stating that he "prayed [sic] upon people who trusted [him]," and that the underlying theme of the case was the numerous and repeated "lies" that Respondent and his co-defendants told in the course of the fraud. *Id.* at 77 and 86, The Court found that Respondent made representations to investors that their money would be used to make loans, and instead it was used to make "*Ponzi* scheme payments to one layer after another." *Id.* at 87. The Court explained that Respondent took "money from people under false pretenses, and then us[ed] it on [himself] for. . . a very lavish lifestyle. *Id.* at 88. Respondent admitted to taking over $5 million in compensation for operating Mathon and related activities. Buckhalter-Honore Decl., Ex. 9 (Slade Plea Agreement) at 8. Finally, Respondent's Plea agreement included a stipulated 15-year Sentencing cap. *Id.* at 3. However, the Court noted that "[b]ut for this Plea Agreement, Mr. Slade, I dare say my sentence would have probably been longer." Buckhalter-Honore Decl., Ex. 16, ("Sentencing Transcript") at 93.

The second *Steadman* factor of recurrence also weighs in favor of a bar. Respondent was convicted in a wide-ranging conspiracy representing an egregious defrauding of numerous investors. Buckhalter-Honore Decl., Ex. 9 (Slade Plea Agreement) at 8-11; *see also* Buckhalter-Honore Decl., Ex. 8 (Slade Indictment) at 17. As the District Court noted, Slade's actions should be distinguished from "someone who commits an illegal act in one brief moment of their life,

from the case where someone is committing an illegal act time and time and time again. And it's the latter that we have here." Buckhalter-Honore Decl., Ex. 16 (Sentencing Transcript) at 86. In sentencing Respondent, the court took into consideration the fraud's "longevity of it as well as the amount of victims who suffered." *Id.* at 90. In fact, the Court stated at the sentencing hearing that "[d]espite being informed by, among others, inside counsel what you and other codefendants were doing, that it was fraudulent, that it was illegal, and that you were being investigated by the [Arizona Corporation Commission][5] as early as 2003, you continued this fraud, this Ponzi scheme, by instituting the Mathon Fund and other funds." *Id.* at 91. These findings by the District Court leave no doubt that Slade's criminal activity was egregious and recurrent rather than isolated.

Respondent also acted with a high degree of scienter. In his Plea Agreement, Slade admitted that he misled investors by, participating in a multi-year Ponzi scheme, as well as by making untrue or misleading statements with regard to his financial experience, that he "previously developed 'innovative financial instruments' and 'high-yield investment funds,' and that MFI had a 'general counsel' named Russ Riggs who had been 'recognized and certified by the Arizona Bar. These statements were either untrue or misleading." Buckhalter-Honore Decl., Ex. 9 (Slade Plea Agreement) at 8. Moreover, at Respondent's sentencing, the District Court specifically found, based upon the warnings and signs given by others, that Respondent knew his actions were wrong: "There is no doubt in my mind that very early on you knew this was wrong." Buckhalter-Honore Decl., Ex. 16 (Sentencing Transcript) at 86-87.

Respondent has provided no assurances against future violations. This fraud continued until it was shut down by the Arizona Corporation Commission, Buckhalter-Honore Decl., Ex 7

[5] The Arizona Corporation Commission ("ACC") shut down the Mathon Fund in April 2005. *See* Buckhalter-Honore Decl., Ex. 9 at 8 (Plea Agreement).

(Order Appointing Receiver) and Ex. 9 (Slade Plea Agreement) at 8. Shockingly, even that action did not cause Respondent to stop violating the law. After Mathon was shut down by the Arizona Corporation Commission, he committed additional fraud, essentially replicating his Mathon-related misconduct – misrepresentations to investors that he was making hard money loans for high returns, when in fact, he was misusing the money himself. Buckhalter-Honore Decl., Ex. 10 (*Slade II* Indictment) and Ex 11 (*Slade II* Plea Agreement) at 6-9. Thus, Respondent's own conduct demonstrates his penchant for continuing to violate the law. If Respondent is not violating the law now, it is undoubtedly only because he is incarcerated. The investing public must be protected even upon his eventual release.

While Respondent pays lip service to acknowledging the wrongful nature of his conduct, even after pleading guilty, he still deflects from the seriousness of his misconduct. He attempts to explain that he only plead guilty because "I was being threatened with 30 years to life and if I took the plea bargain the maximum sentence was 15 years," and because of the "tremendous amount of stress on my family and myself" Buckhalter-Honore Decl., Ex. 2 (February 15 letter). Although through his guilty plea, Respondent may have evinced some partial acknowledgement of responsibility, the District Court found this acknowledgment too little to persuade it to sentence Respondent to anything less than the maximum allowed under his plea agreement, and it similarly too little too late here.

Finally, Respondent is a securities professional, who has been associated with a number of securities firms. Buckhalter-Honore Decl., Ex. 3 (CRD Report, U4 Employment History regarding Duane Hamblin Slade). Therefore, his chosen occupation unquestionably presents opportunities for future violation, as evidenced by his decision to commit additional fraud in the wake of the collapse of the Mathon fraud.

Because each of the *Steadman* factors militates in favor of barring Respondent, he should be permanently barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

CONCLUSION

For the foregoing reasons, the Division requests that the Administrative Law Judge issue an initial decision imposing the sanctions recommended herein against Respondent.

Dated: April 10, 2015

Respectfully submitted,

Spencer E. Bendell
Melissia A. Buckhalter-Honore
DIVISION OF ENFORCEMENT
SECURITIES AND EXCHANGE COMMISSION
444 South Flower Street, Suite 900
Los Angeles, CA 90071
Telephone: (323) 965-4572
Facsimile: (213) 443-1905
COUNSEL FOR
DIVISION OF ENFORCEMENT