

ORIGINAL

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16336



In the Matter of

GUY ANDREW WILLIAMS,

Respondent

DIVISION OF ENFORCEMENT'S
MOTION FOR SANCTIONS AGAINST
RESPONDENT GUY ANDREW
WILLIAMS

INTRODUCTION

Pursuant to the Administrative Law Judge's February 24, 2015 Order to Show Cause (the "OSC"), the Division of Enforcement (the "Division") respectfully submits this Motion for Sanctions against Respondent Guy Andrew Williams ("Respondent or Williams"). Specifically, the Division requests that Respondent be barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

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 Investment Advisers Act of 1940 ("Advisers Act") to determine what, if any, remedial action is appropriate in the public interest. At a telephonic prehearing conference held February 11, 2015, the ALJ found that service of the OIP was completed on January 21, 2015, 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 OIP advised Respondent that his failure to answer might result in his default being entered and the proceedings determined against him on that basis. OIP at Section IV. The February 11 Order informed Respondent that if he failed to file an Answer, “he will be deemed in default.” February 11 Order at 1. Respondent failed to file an Answer, and the Administrative Law Judge issued the OSC, which ordered Respondent, on or before March 6, to show cause why this proceeding should not be determined against him based upon his default, and warned him that in the absence of a response, “he will be deemed in default and the proceeding will be determined against him.” OSC at 1. The OSC also called for the Division to file the instant Motion for Sanctions in the event that Respondent failed to respond to the OSC. *Id.* Respondent has not responded to the OSC nor filed an Answer.¹

STATEMENT OF FACTS

From at least 2002 to 2005, Respondent was associated, as a 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. 1 (Investment Advisers Registration Depository (“IARD”) Report regarding Guy Andrew Williams) at 5; Ex. 2 (IARD Report regarding Mathon) at 3-4, Ex. 3 (Feb. 6, 2004 Initial Form ADV) at 24, and Ex. 4 (Jan. 28, 2005 Amendment to Form ADV) at 19.²

¹ In light of Respondent’s default, the Administrative Law Judge should accept all allegations in the OIP as true. Commission Rule of Practice 155(a), 17 C.F.R. § 201.155(a); *see also* Rule 220(c), 17 C.F.R. § 201.220(c) (“Any allegation not denied shall be deemed admitted.”)

² 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

Respondent Williams was indicted on December 2, 2009. Buckhalter-Honore Decl., Ex. 6 (Indictment in *United States v. Guy Andrew Williams*, Case No. CR 09-01492-002-PHX-ROS (D. Ariz.) (“Indictment”)). On June 28, 2013, Respondent Williams was found guilty, after a jury trial, of conspiracy to commit mail and wire fraud, mail fraud, wire fraud, and transactional money laundering, in violation of Title 18 United States Code, Sections 1349, 1341, 1343, and 1957(a). Buckhalter-Honore Decl., Ex. 7 (General Verdict in *United States v. Williams* (“Verdict Form”)). On September 30, 2013, Respondent Williams was sentenced to 150 months in prison, followed by three years of supervised release. Buckhalter-Honore Decl., Ex. 8, (Judgment in a Criminal Case). On January 9, 2014, the judgment was amended to include an order of restitution against Respondent Williams in the amount of \$32,965,166.43. Buckhalter-Honore Decl., Ex. 9, (Amended (to reflect the restitution amount as ordered by the Court on December 30, 2013) Judgment in a Criminal Case (“Amended Judgment”)).

The counts of the criminal indictment as to which Respondent Williams was found guilty alleged, *inter alia*:

from 2002 to 2005, Respondent and others operating through Mathon-related entities, falsely promised investors that Mathon could earn high-yield rates of return for investors by making short-term, high-interest hard money loans to borrowers, and using repayment of principal and interest on those loans to pay investor returns, when the Respondent knew that the loans were in default or non-performing. The Respondent concealed from the investors that the loans were in default, non-performing and/or otherwise incapable of generating high rates of returns on the purported ‘investments’ as the Respondent represented. The Respondent also repaid earlier investors with funds from later investors and unlawfully enriched himself through excessive origination fees, management fees, and other means. Specifically, the Respondent took \$5,862,064 from victim investors as purported compensation and other financial remuneration.”

the Arizona Corporation Commission. See Buckhalter-Honore Decl., Ex. 5 (Order Appointing Receiver).

See OIP at 2; see also Buckhalter-Honore Decl., Ex. 6 (Indictment) at 2, 5-8, 12 and 17.³

ARGUMENT

A. Respondent Williams' 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. OIP at 2; Buckhalter-Honore Decl., Ex.1 (IARD Report regarding Guy Andrew Williams) at 5 and Ex. 2 (IARD Report regarding Mathon) at 3-4. Likewise, there can be no question that the crimes of which Respondent Williams was convicted are among those which provide a basis for a bar from the securities industry. Respondent was convicted of violations of 18 U.S.C. §§ 1341 and 1343, as set forth in Section 203(e)(2)(D), and his convictions arose out of the business of an investment adviser, as

³ “In a follow-on administrative proceeding after a criminal conviction based on a guilty verdict, the Administrative Law Judge may rely upon the allegations set forth in the counts of the indictment to as to which the Respondent was convicted “without reference to whether such allegations were necessarily put in issue and determined in the criminal case. *In the Matter of Michael Robert Balboa*, Release No. 747, 2015 WL 847168, at *3 (Initial Decision, Feb. 27, 2015).

⁴ The criminal conduct giving rise to Williams' 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).

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 Williams from the securities industry is in the public interest.

B. The Imposition of a Bar against Respondent Williams 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, each of the *Steadman* factors weighs in favor of imposing a permanent bar from associating with any entity in the securities industry as to Respondent Williams. 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 is one in which opportunities for dishonesty recur constantly." *Toby G. Scammell*, 2014 WL 5493265, at *5.

First, Respondent Williams' conduct was egregious. According to the indictment, Respondent Williams 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, and through this fraudulent process, Respondent Williams greatly enriched himself in the amount of \$5,862,064.

Buckhalter-Honore Decl., Ex. 6 (Indictment) at 2, 8 and 17. According to the District Court in

the underlying criminal action, this fraud constituted a “serious crime” that harmed investors “to a great degree,” and caused “significant pain” to the investors. Buckhalter-Honore Decl., Ex. 10, Transcript of Respondent’s Sentencing Hearing (“Sentencing Transcript”) at 76 and 78.

The second *Steadman* factor of recurrence also weighs in favor of a bar. Respondent Williams was convicted, not only of participation in a wide-ranging conspiracy, but of two counts of mail fraud and thirteen separate counts of wire fraud, each representing a distinct instance of defrauding an investor. Buckhalter-Honore Decl., Ex. 7 (Verdict Form). As the District Court noted, Respondent Williams’ actions were “done often, [and] repeatedly,” “happened on a regular basis,” and involved “a large amount of money . . . over a long period of time.” Buckhalter-Honore Decl., Ex. 10 (Sentencing Transcript) at 75 and 80. The District Court further noted that Respondent Williams’ criminal conduct was “...not something you do once and then forget about it, you had to work at it.” *Id.* at 76. These findings by the District Court conform that Respondent Williams’ criminal activity was egregious and recurrent rather than isolated.

Respondent Williams also acted with a high degree of scienter. The jury which found Respondent Williams guilty was instructed to find him guilty of mail and wire fraud only if he acted with the “intent to defraud.” Buckhalter-Honore Decl., Ex. 11 (Jury Instructions) at 16 and 20. Moreover, at Respondent Williams’ sentencing, the District Court specifically found that he committed his crimes “intentionally.” Buckhalter-Honore Decl., Ex. 10 (Sentencing Transcript) at 75.

Respondent Williams has chosen not to participate in this proceeding, and has instead defaulted. Consequently, he has provided no assurances against future violations, nor has he in any way acknowledged the wrongful nature of his conduct. *See In the Matter of James Prange,*

Release No. 724, 2014 WL 7211677, at *5 (Initial Decision Dec. 19, 2014) (noting respondent's failure to answer or otherwise defend allegations as evidence of failure to acknowledge wrongful conduct). Finally, Respondent is a securities professional, who has been associated with a number of securities firms. Buckhalter-Honore Decl., Ex. 1 (IARD Report regarding Guy Andrew Williams) at 5. Therefore, his chosen occupation unquestionably presents opportunities for future violation.

Because each of the *Steadman* factors militates in favor of barring Respondent Williams, 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 Williams.

Dated: March 13, 2015

Respectfully submitted,



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