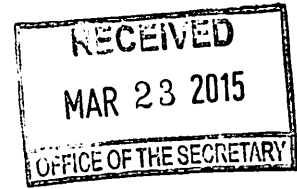


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**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**



**ADMINISTRATIVE PROCEEDING
File No. 3-16357**

In the Matter of

STUART E. RAWITT,

Respondent.

**MOTION BY DIVISION OF
ENFORCEMENT FOR IMPOSITION OF
REMEDIAL SANCTIONS AGAINST
RESPONDENT STUART E. RAWITT**

I. INTRODUCTION

This Motion for Imposition of Remedial Sanctions (“Motion”) is brought, pursuant to Court order, on the basis of (1) a default judgment of permanent injunction entered against Stuart E. Rawitt (“Rawitt” or “Respondent”) in the underlying civil enforcement action, (2) the Order Instituting Proceedings (“OIP”) against Rawitt in this follow-on administrative proceeding and this Court’s order finding Rawitt in default therein, and (3) Rawitt’s guilty plea in a parallel criminal action against him for the same conduct giving rise to the civil matter, wherein Rawitt admitted to most of the relevant allegations contained in the Securities and Exchange Commission’s (“SEC”) complaint, including making “many, if not most” of the false statements to investors that were alleged in the complaint. For these reasons, Rawitt should be barred from associating with an investment adviser, municipal securities dealer, municipal advisor, transfer agent, nationally recognized statistical rating organization (“NRSRO”), or investment company, or from participating in an offering of penny stock.

II. STATEMENT OF FACTS

On January 23, 2015, the SEC issued an OIP in this matter pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”). The OIP alleges that, in connection with his sale of securities intended to fund the production of a motion picture, Respondent (a) made material misrepresentations to investors regarding the commercial prospects for the film and the benefits of investing therein; (b) was not associated with a registered broker or dealer while soliciting money from investors; and (c) was subject to an SEC order barring him from association with any registered broker or dealer.¹

¹ On July 15, 2010, Rawitt entered into a consent judgment permanently barring him from violating Sections 5(a) and 5(c) of the Securities Act of 1933 and Section 15(a) of the Exchange

The OIP further alleges that on November 20, 2014, a default judgment was entered against Rawitt in the civil action giving rise to this administrative proceeding, *Securities and Exchange Commission v. Samuel Braslau, et al.*, Case No. 2-14-cv-01290 (C.D. Cal.), permanently enjoining Rawitt from future violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 15(a)(1) and 15(b)(6)(B)(i) of the Exchange Act.

Finally, the OIP alleges that on October 31, 2014, Rawitt pleaded guilty to one count of mail fraud in violation of Title 18, United States Code, Section 1341, to settle the parallel criminal action brought against him for the same conduct that formed the basis for the SEC’s civil action, *United States v. Samuel Braslau, et al.*, CR No. 14-44-RGK (C.D. Cal.). As part of his plea agreement, Rawitt submitted a sworn declaration wherein he admitted to most of the relevant allegations contained in the SEC’s complaint, including making “many, if not most” of the false statements to investors that were alleged in the SEC’s complaint. (OIP ¶¶ 2-4.)

Rawitt was personally served with the OIP on January 26, 2015. Pursuant to SEC Rule of Practice 220(b), Rawitt was required to file his answer on or before February 17, 2015. He did not do so. On February 25, 2015, this Court issued its Order Following Prehearing Conference, wherein it found Rawitt to be “in default for failure to file an Answer, appear at the [February 25] prehearing conference, or otherwise defend this proceeding”, and ordered the Division of Enforcement (“Division”) to file a motion for sanctions.

Act. See *SEC v. Rockwell Entergy of Texas, LLC, et al.*, Case No. 4:09-cv-4080 (S.D. Texas). On October 27, 2010, the Commission instituted public administrative proceedings against Rawitt and accepted his settlement offer whereby he agreed to a bar from future association with any broker or dealer. See *In the Matter of Stuart E. Rawitt*, Admin. Proc. 3-14099 (Oct. 27, 2010).

Accordingly, the Division respectfully submits this Motion. Because, as noted, Rawitt was previously barred from association with any broker or dealer, the Division does not seek duplicative relief. Instead, the Division requests that the Court issue an order that provides the full extent of collateral relief that has been authorized for a violation of Section 15(a) of the Exchange Act since 2010 – specifically, an order that collaterally bars Rawitt from associating with an investment adviser, municipal securities dealer, municipal advisor, transfer agent, NRSRO, or investment company, or from participating in an offering of penny stock.

III. ARGUMENT

There are several well-recognized factors that are to be considered in determining the appropriate remedy in the public interest in proceedings seeking to bar a respondent. Those factors are: (1) the egregiousness of the 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 or her conduct; and (6) the likelihood that 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 Sandru*, 2013 SEC LEXIS 2346, *19 (Initial Decision, August 12, 2013) (*Steadman* factors used to determine whether a bar is in the public interest, where sanctions were imposed by default).

All of the *Steadman* factors are present in this case. First, the allegations of the OIP are deemed true when a respondent fails to timely answer and is in default. *See Sandru*, 2013 SEC LEXIS *3. Those allegations include that a final judgment by default was entered on November 20, 2014, in a district court action brought against Rawitt, permanently enjoining him from future violations of Section 17(a) of the Securities Act, and Sections 10(b), 15(a)(1), and 15(b)(6)(B)(i) of the Exchange Act and Rule 10b-5(b) thereunder in *SEC v. Braslau, et al.*, No. 2:14-cv-01290 (C.D.

Cal.). (OIP ¶ 2.) The factors weighed for entry of an injunction are identical to the *Steadman* factors. *See SEC v. Murphy*, 526 F.2d 633, 655 (9th Cir. 1980). The District Court weighed those factors in determining that injunctive relief was appropriate against Rawitt. (*See Order Granting Plaintiff's Motion for Default Judgment Against Defendant Stuart E. Rawitt* ("Order"), a certified copy of which is attached to the Declaration of Peter Del Greco ("Del Greco Dec.") as Exhibit 1, at 7:1-10.)² Applying collateral estoppel principles, Rawitt is precluded from contesting any findings made against him in the civil injunctive action. *See In the Matter of Grosnickle*, 2011 SEC LEXIS 3969 * 4 (November 10, 2011) (Initial Decision), *citing In the Matter of Gunderson*, Exchange Act Release No. 61234, 97 SEC Docket 24040, 24047, SEC LEXIS (Dec. 23, 2009).³

With regard to the underlying violations, the OIP alleges that Rawitt offered and sold securities while making materially false representations regarding the production and distribution of the film project, projected rates of return on investment, and the purported tax benefits of investing in the film, during such time that he was neither registered as or associated with a registered broker or dealer, and during such time that he was subject to a 2010 SEC order barring him from association with any registered broker or dealer. (OIP ¶ 3.)

These same facts were found by the District Court. The SEC alleged that, in the course of soliciting investors, Rawitt made a number of material misrepresentations, including, among other things, false statements as to (a) actors who would be in the movie, (b) the success of the fundraising effort, (c) the date on which principal photography would begin, (d) the sale of

² A certified copy of the Judgment of Permanent Injunction and Disgorgement, Prejudgment Interest and Civil Penalty is attached to the Del Greco Dec. as Exhibit 2.

³ Because Rawitt cannot contest the facts found by the District Court, the Division's motion for imposition of sanctions could alternatively be treated as a motion for summary disposition, with the same result.

distribution and licensing rights, and (e) the anticipated return on investment. (Complaint, ¶¶ 85-95.⁴) In the parallel criminal action, Rawitt admitted that “[a]lthough I do not recall each and every such statement, I do admit making many, if not most, of them to prospective investors . . . I did not “know” these statements were, in fact, false because I chose not to know and did not question either co-defendant . . . as to the basis for any such statement. I agree that at the very minimum my lack of knowledge, therefore, was “reckless.”” (Declaration of Stuart Rawitt, Exhibit A to Plea Agreement of Defendant Stuart Rawitt, ¶¶ 13, 16.⁵) In his Order, the District Court Judge found that “[i]n his criminal guilty plea, Rawitt substantiated the SEC’s civil allegations by admitting that he recklessly made false and material misrepresentations to potential investors [citing Rawitt Declaration ¶¶ 13 and 16]. Therefore, he violated Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Securities Exchange Act.” (Order at 8:3-6.)

Similarly, with respect to the SEC’s allegations that Rawitt had violated Section 15(a)(1) of the Exchange Act, the District Court found that “Rawitt acted as a broker in connection with co-Defendants’ securities offerings. He directly solicited potential investors and raised substantial amounts of money. He received transaction-based compensation, earning 27% of the amount invested by any person he closed by himself and 10 to 15% of the amount invested by any person he closed with the assistance of others. Rawitt was not a registered broker or dealer when he sold securities. Therefore, he violated Section 15(a)(1) of the Securities Exchange Act.” (Order at 8:10-16.) Further, Rawitt admitted in the parallel criminal action, that he was hired to “raise

⁴ A true and correct copy of the Complaint is attached to the Del Greco Dec. as Exhibit 3.

⁵ A certified copy of the Plea Agreement and Rawitt’s Declaration thereto are attached to the Del Greco Dec. as Exhibit 4.

funds, by use of [his] telemarketing skills, for the movie that [the co-defendants] intended to produce, [his] compensation being a percentage of the funds [he] raised.” (Rawitt Dec. ¶10).

Moreover, with respect to the SEC’s allegations that Rawitt had violated Section 15(b)(6)(B)(i) of the Exchange Act, the District Court found that “[t]hrough his involvement with [co-defendants], Rawitt violated the October 27, 2010 Order instituted by the SEC. Therefore, he violated Section 15(b)(6)(B)(i).” (Order at 8:19-21.)

As explained, the factors weighed for entry of an injunction under *SEC v. Murphy* are identical to the *Steadman* factors, and the District Court weighed those factors in determining that injunctive relief was appropriate against Rawitt. (Order at 7:1-10.) The District Court noted that a permanent injunction was appropriate because “Rawitt’s violations were continued and egregious. Repeatedly, Rawitt made false and misleading representations to potential investors that were designed to convince them to invest so that he could earn substantial and undisclosed sales commissions drawn from their investment. He did so with full knowledge that no movie had been made or likely could ever be made.” (Order at 9:17-22.)

Because all of the *Steadman* factors are present, and because Rawitt is a recidivist who evidently learned nothing from the legal action taken against him in 2010, it is in the public interest to impose a full collateral bar that supplements the 2010 bar by precluding him from associating with any securities professional, and from participating in any offering of a penny stock. Associational bars have long been considered an effective deterrence. *See Guy P. Riordan*, Exchange Act Release No. 61153, 2009 SEC LEXIS 4166, at *81 & n.107 (Dec. 11, 2009) (collecting cases), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010). When, as here, the misconduct involves fraud, it is in the public interest “to be mindful of the fact that the securities industry is

one in which opportunities for dishonesty recur constantly [which] necessitates specialized legal treatment.” *Richard C. Spangler, Inc.*, 46 S.E.C. 238, 252 (1976) (internal footnotes omitted).

IV. CONCLUSION

For the reasons stated, Rawitt should be barred from association with any investment advisor, municipal securities dealer, municipal advisor, transfer agent, NRSRO, or investment company, as well as from participating in an offering of penny stock.

Dated: March 20, 2015

Respectfully submitted,



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