HARD COPY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16427

In the Matter of

Robert J. Lunn,

Respondent.

THE DIVISION OF ENFORCEMENT'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION

Introduction

In his Answer to the Division of Enforcement's Motion for Summary Disposition, Respondent Lunn completely misses both the standard and purpose for imposing a bar in a follow-on proceeding. While claiming not to collaterally challenge his criminal conviction, Lunn seeks to diminish the nature of his misconduct and blame the jury for not accepting ***his*** version of the facts as true. According to Lunn, his conduct was akin to a simple commercial dispute, not the five counts of bank fraud for which he was convicted. It is well established that summary disposition is not the appropriate venue in which to challenge a criminal conviction. In fact, the Commission has repeatedly cautioned respondents against rehashing matters litigated before a jury and adjudicated before a federal district court in follow-on administrative proceedings.

Elsewhere in his Summary Disposition Answer, Lunn contradicts himself by admitting that his misconduct is sufficient to bar him from owning a broker-dealer in the future, but claims that

the facts do not warrant an associational bar. Although Lunn indicates he does not plan to "establish a broker or dealer operation" in the future, he provides no similar assurances against opening an investment adviser or associating himself with either a broker-dealer or investment adviser. Finally, Lunn argues that his situation is not distinguishable from that of Gary L. McDuff, Exchange Act Rel. No. 74803, 2015 WL 1873119 (Apr. 23, 2015), but completely fails to cite any case law to support his position or address the similarities between the evidentiary record in this case and that of Ross Mandell, Exchange Act Rel. No. 71688, 2014 WL 907416 (March 7, 2014). Given his long career in the securities industry, the high degree of scienter inherent in his fraudulent conduct, and Lunn's complete lack of assurances against future violations, the Court should grant the Division's Motion for Summary Disposition and impose a permanent collateral associational bar and penny stock bar against Lunn.

ARGUMENT

Contrary to Lunn's assertions, the Indictment in U.S. v. Robert J. Lunn, Case No. 12 CR 402 (N.D. Ill.), alleged five counts of bank fraud in violation of 18 U.S.C. §1344, not a mere commercial dispute or failure to follow requirements. In particular, the Indictment alleged that between approximately May 2001 and September 2004, Lunn fraudulently obtained approximately $3.2 million in loans from an FDIC-insured bank based on a series of misrepresentations about his own financial assets, the purposes of the loans, and the authorization of two of Lunn and Lunn Partners' advisory clients who were purportedly seeking certain of the loans. (Brief Ex. A.) Ultimately, according to the Indictment, Lunn used substantially all of the fraudulently obtained funds for his own benefit, including misappropriating $1.4 million to make mortgage payments and payments to unrelated complaining investment advisory clients. (Brief Ex. A ¶¶ 3, 7, 14, 15.)

A. A Collateral Bar is Appropriate and in the Public Interest

Under Section 15(b)(6) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, once the Division has proven that an individual associated with a broker-dealer and investment adviser was convicted within the last ten years of a felony or misdemeanor involving acts such as misappropriating funds, misconduct arising out of the conduct of an investment adviser, and making a false report, the only remaining determination is whether a bar is in the public interest. See, e.g., Shaw Tehrani, Init. Decision Rel. No. 42, 1993 WL 528211, at *2 (Dec. 15, 1993); Ross Mandell, Exchange Act Rel. No. 71688, 2014 WL 907416 (March 7, 2014). Since Lunn has admitted that he was associated with both a registered broker-dealer and investment adviser at the time of his conduct and that he was convicted of five counts of bank fraud on October 17, 2014, the only remaining issue is whether a bar is appropriate in the public interest according to the factors set out in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). These factors easily weigh in favor of an industry bar.

1. Lunn's Misconduct Was Egregious and Intentional

The jury instructions for U.S. v. Lunn set out each of the very specific elements the government needed to prove beyond a reasonable doubt for the jury to find Lunn guilty of each of the five counts of bank fraud charged in the Indictment. These elements speak directly to the egregious and intentional nature of Lunn's misconduct. Specifically, the jury instructions state that "knowingly" executing a scheme and acting "with the intent to defraud" mean that a person "realizes what he is doing and is aware of the of the nature of his conduct, and does not act through ignorance, mistake, or accident" and "acts knowingly with the intent to deceive or cheat the victim in order to cause a gain of money or property to the defendant or another or the potential loss of money or property to another." (Brief Ex. I at 17-18). By finding Lunn guilty of each of the five

counts of the Indictment, the jury necessarily found that Lunn committed the crimes intentionally and with a high degree of scienter. ALJs have found in other follow-on administrative proceedings that a fraud conviction indicates a high degree of scienter. See, e.g., Adam Harrington, Initial Decision Rel. No. 484, 2013 WL 1655690, at *4 (April 17, 2013); and Richard P. Callipari, Initial Decision Rel. No. 237, 2003 WL 22250402, at *5 (Sept. 30, 2003).

2. Lunn's Misconduct Was Recurrent, not Isolated

The jury instructions for U.S. v. Lunn required the jury to find that Lunn's crimes happened reasonably close to the dates charged in the Indictment. (Brief Ex. I at 21.) As a result, by finding Lunn guilty of each of the five counts of the Indictment, the jury necessarily found that Lunn committed the crimes reasonably close to the time frame of May 2001 to September 2004 and that Lunn's crimes were recurrent, not isolated incidents.

3. Lunn Has Not Provided Any Assurances against Future Violations or Recognized the Wrongful Nature of his Misconduct

Lunn's Summary Disposition Answer is chock-full of excuses and rationalizations for his misconduct. Lunn has not provided any assurances against future violations or accepted any responsibility for his crimes in either this administrative proceeding or the criminal case. Instead, Lunn attempts to compare his actions to a simple commercial dispute and failure to observe "procedural" requirements. Lunn pled not guilty in the criminal case and continues to challenge his criminal conviction. In addition, Lunn's criminal sentencing hearing has been postponed three times - most recently from June 9, 2015 to September 9, 2015. Consequently, there are no assurances that Lunn's criminal sentence will prevent any future violations. Lunn's complete refusal to accept any responsibility for his actions speaks loudly to the need for a bar to prevent him from engaging in similar misconduct in the future.

4. Lunn's Occupation Will Present Future Opportunities for Violations

Lunn has spent his entire career - over 34 years - in the securities industry. In his Summary Disposition Answer, Lunn indicates that he does not intend to "***establish*** a broker or dealer operation of any sort" (emphasis added), but provides no similar assurance that he will not open another investment adviser or become associated with another broker-dealer or investment adviser. In fact, it is not overreaching to read into the careful wording of Lunn's Answer that he intends to perform such work. The securities industry is no place for someone convicted of a crime that includes lying to and misappropriating funds from investment advisory clients. See, e.g., Bruce Paul, Exchange Act Rel. No. 21789, 32 S.E.C. Docket 723, 1985 WL 548579, at *2 (Feb. 26, 1985) ("the securities industry presents a great many opportunities for abuse and overreaching, and depends very heavily on the integrity of its participants.").

B. Lunn is Distinguishable from *McDuff*

As discussed in more detail in the Division's Supplemental Brief, the current situation is distinguishable from Gary L. McDuff because Lunn admitted that he was associated with a broker-dealer and an investment adviser, Lunn's fraudulent scheme extended for at least three years, and the scheme involved specific elements that fall directly within the parameters for a bar under the Exchange Act and the Advisers Act.

Unlike McDuff, the jury instructions in U.S. v. Lunn set out each of the very specific elements the government needed to prove beyond a reasonable doubt for the jury to find Lunn guilty of each of the five counts of bank fraud charged in the Indictment. Moreover, similar to Ross Mandell, which also involved a general verdict, the District Court's Order denying Lunn's Motion for Judgment of Acquittal or New Trial made express findings about what the jury had to have concluded from the evidence presented at Lunn's criminal trial in order to reach the guilty verdict. Both the jury instructions and the District Court's Order indicate that by finding Lunn

guilty of each of the five counts of bank fraud, the jury necessarily found that: 1) Lunn engaged in a multi-year scheme to defraud or obtain money from a bank by means of false or fraudulent pretenses, representations or promises; 2) Lunn knowingly executed the scheme; 3) Lunn acted with the intent to defraud; and 4) Lunn's scheme involved a materially false or fraudulent pretense, representation, or promise. (Brief Ex. I at 13; Supplemental Brief Ex. 1.) In other words, by finding Lunn guilty of each of the five counts of the Indictment, the jury necessarily found that on five separate occasions, Lunn obtained funds totaling approximately $3.2 million by means of false or fraudulent pretenses, representations or promises, including false representations that Lunn was acting on behalf of two of his investment advisory clients, Scottie Pippen and Robert Geras, and misrepresentations about Lunn's personal stock holdings. (Brief Ex. I at 29-35).

In its Order, the District Court reiterated the five elements the government needed to prove to establish bank fraud under 18 U.S.C. §1344 and concluded that "[t]he record contains sufficient evidence to support the jury's verdict on each count" of the Indictment. (Supplemental Brief Ex. 1.) The Court further found that Pippen and Geras testified "they did not authorize [Lunn] to take loans out in their names," that Lunn "admitted that he signed Pippen and Geras's names on the various loan documents," and that Lunn "submitted or caused to be submitted false financial statements . . . falsely claim[ing] to own stock in Lehman Brothers and Morgan Stanley worth millions of dollars, which he knew that he had sold years earlier in the 1990's." (Id. at 2.) Based on this evidence, the Court concluded that the record contained sufficient evidence to support the jury's guilty verdict on each of the five counts and denied Lunn's motion. (Id. at 2.) In Ross Mandell, the Commission similarly drew facts from both the indictment underlying a criminal conviction and an order denying a motion for acquittal or new trial to find that a bar was in the public interest. Exchange Act Rel. No. 71688, 2014 WL 907416, at *2-3, n. 13, n. 14 (March 7,

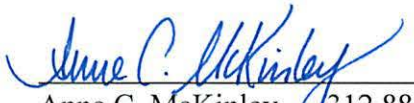
2014). Based on this precedent, it is appropriate to draw upon the criminal Indictment, the jury instructions, and the District Court's Order along with the other evidence attached to the Division's Brief and find that a collateral bar is appropriate and in the public interest.

CONCLUSION

For the reasons discussed above, the Division respectfully requests that the Administrative Law Judge grant the Division's Motion for Summary Disposition and enter an order barring Lunn from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization ("NRSRO"), and from participating in any offering of penny stock.

Dated: June 10, 2015

Respectfully submitted,



Anne C. McKinley 312.886.1588
Counsel for Division of Enforcement
U.S. Securities and Exchange Commission
175 West Jackson Boulevard, Suite 900
Chicago, IL 60604
Email: mckinleya@sec.gov

CERTIFICATE OF SERVICE

I hereby certify that true copies of the Division of Enforcement's Reply in Support of Its Motion for Summary Disposition were served on the following on this 10th day of June 2015, in the manner indicated below:

Via UPS & Email (ALJ@sec.gov, brunoa@sec.gov)
The Honorable Jason S. Patil, Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549
(Courtesy Copy)

Via UPS & Facsimile (202.772.9324)
Brent J. Fields, Secretary
Securities and Exchange Commission
100 F. Street, N.E.
Washington, DC 20549

Via UPS & Email (johnmbeal@att.net)
John M. Beal, Esq.
53 West Jackson Boulevard
Chicago, IL 60604

Anne C. McKinley

HARD COPY

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
CHICAGO REGIONAL OFFICE
SUITE 900
175 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS 60604-2615

ANNE C. MCKINLEY
ASSISTANT REGIONAL DIRECTOR
DIVISION OF ENFORCEMENT

TELEPHONE: (312) 886-1588
FACSIMILE: (312) 353-7398
MCKINLEYA@SEC.GOV

10 June 2015

Via UPS and Facsimile
Brent J. Fields, Secretary
Office of the Secretary
100 F Street, N.E.
Washington, DC 20549
Facsimile: 202.772.9324

Re: In the Matter of Robert J. Lunn (Admin. Proc. File No. 3-16427)

Dear Mr. Fields:

Enclosed please find the Division of Enforcement's Reply in Support of its Motion for Summary Disposition for filing in the above-referenced matter. I am sending this document to you today by facsimile at 202.772.9324. The original document and three copies will be coming to you by overnight mail.

If you have any questions or need any additional information, please contact me at 312.886.1588.

Sincerely,

Anne C. McKinley

Enclosure