

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16706

In the Matter of

SACHIN K. UPPAL,

Respondent.

**THE DIVISION OF ENFORCEMENT'S
BRIEF IN OPPOSITION TO SACHIN K.
UPPAL'S REQUEST TO VACATE
COLLATERAL BARS**

On July 18, 2019, Sachin K. Uppal ("Uppal") submitted his Request to Vacate Collateral Bar(s) in Light of *Bartko v. SEC* ("Request to Vacate"). The Division of Enforcement ("Division") submits this Brief in Opposition to Uppal's Request to Vacate. Uppal's Request to Vacate should be denied because the collateral bars imposed against him were based on conduct after July 22, 2020.

I. PROCEDURAL HISTORY

A. The Commission's Order Instituting Proceedings

On July 28, 2015, the Securities and Exchange Commission ("Commission") issued an Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") and Notice of Hearing ("OIP"). The OIP was a follow-on proceeding based on Uppal's criminal conviction in connection with a fraudulent investment scheme. The OIP stated that, on August 14, 2014, Uppal pled guilty to one count of wire fraud in violation of 18 U.S.C. § 1343. *U.S. v. Sachin Uppal*, No. 14-cr-20354 (E.D. Mich. Aug. 14, 2014). The OIP further stated that the count to which Uppal pled guilty alleged that, from at least July 2007 to September 2013, Uppal, through an entity known as Jefferson Smith Trading Co., LLC, made false statements to investors in connection with the purchase or sale of securities.

Specifically, Uppal raised millions of dollars from at least 14 investors by falsely stating that that the investors earned high rates of returns when, in fact, he misappropriated funds for his own use. While engaged in this conduct, Uppal was associated with an investment advisor. Uppal was sentenced to 64 months imprisonment followed by 36 months of supervised release and ordered to pay restitution of \$3,867,187.¹

B. The ALJ's Initial Decision

On September 18, 2015, the Division filed a Motion for Summary Disposition (“Motion”). On December 1, 2015, a Commission administrative law judge (“ALJ”) issued an Initial Decision granting the Division’s Motion. *Sachin K. Uppal*, Release No. ID-920, 2015 WL 7748187 (Dec. 1, 2015).² The Initial Decision permanently barred Uppal from associating with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. *Id.* at *1. On February 5, 2016, the Commission issued a notice that the ALJ’s initial decision has become final. *In the Matter of Sachin K. Uppal*, IA Release No. 4330 (Feb. 5, 2016).

C. Uppal's Request to Vacate

On January 17, 2023, in *Bartko v. SEC*, 845 F.3d 1217 (D.C. Cir. 2017), the United States Court of Appeals for the D.C. Circuit ruled that collateral bars could not be imposed on a respondent for conduct prior to July 22, 2010, the date the Dodd-Frank Act became effective. On February 23, 2017, the Commission issued its Statement Regarding Decision in *Bartko v. SEC*, announcing that anyone who was a subject of an order imposing a collateral bar may request that

¹ According to the website for the Federal Bureau of Prisons, Uppal was released from prison on September 21, 2018 (<https://www.bop.gov/inmateloc/>).

² Uppal received two extensions of time to file his answer to the OIP. On October 13, 2015, after the Division filed its Motion for Summary Disposition, the ALJ received Uppal’s answer. The ALJ construed Uppal’s submission as both an answer to the OIP and his opposition to the Division’s Motion. *Uppal at* *2.

such bars be vacated if they believe all their conduct resulting in the bar(s) occurred prior to July 22, 2010. On July 18, 2019, Uppal filed his Request to Vacate with the Commission.

On August 4, 2023, the Commission issued an Order Requesting Additional Briefing in this proceeding. IA Rel. No. 6364, 2023 WL 4998127 (“Aug. 4 Order”). In the Aug. 4 Order, the Commission stated that “[t]he [OIP] appears, however, to contain allegations of misconduct supporting the bars that extended beyond July 21, 2010. As a result, the Commission's consideration of Uppal's request to vacate would be assisted by briefing on the question of whether relevant misconduct continued past July 21, 2010. . .” The Commission also asked that the parties address whether the relevant conduct continued after that date and, if so, should “the bars be vacated notwithstanding such post Dodd-Frank misconduct.” Aug. 4 Order, at *1.

II. THE COLLATERAL BAR AGAINST UPPAL SHOULD BE UPHELD

A. A Significant Amount of Uppal’s Fraudulent Conduct Occurred After July 21, 2010

Uppal’s Request to Vacate should be denied. Uppal engaged in unlawful conduct from at least July 2007 until September 2013, over three years after the Dodd-Frank Act’s effective date. *See, e.g., Joseph J. Fox*, Release No. ID-1382, 2019 WL 3531257, at *5, n. 5 (July 30, 2019) (ALJ notes that, in ordering a collateral bar, much of respondent’s misconduct occurred after July 22, 2010).

Uppal has admitted that he engaged in violative conduct from July 2007 to September 2013. The OIP alleges that, in the criminal case against him, Uppal pled guilty to one count of wire fraud in connection with a fraudulent investment scheme he executed “from at least July 2007 to September 2013.” OIP at 2. In his Initial Decision, the ALJ noted that Uppal did not deny any facts alleged in the OIP. Therefore, these allegations are deemed to be admitted. *Uppal*, at *2. Among the admitted allegations is the fact that Uppal engaged in his unlawful conduct during the period

alleged in the OIP. *Id.* Uppal's plea agreement in the criminal case against him also states that Uppal engaged in his fraudulent scheme "[f]rom approximately July 2007 and continuing through September 2013 . . ." Uppal signed this plea agreement. *See U.S. v. Sachin Uppal*, No. 14-cr-20354, Doc. #14 (E.D. Mich. Aug. 14, 2014)

B. The Collateral Bars Against Uppal Should Remain in Place

Uppal's misconduct extended for at least three years past July 21, 2010, the Dodd-Frank effective date, and there is no justification for vacating the bars notwithstanding his post Dodd-Frank conduct. In his Initial Decision, the ALJ found that Uppal's conduct warranted a full collateral bar. The ALJ found that, under Section 203(f) of the Advisers Act, the Commission has the authority to impose a collateral bar against Uppal if, among other things: (1) he was associated with an investment adviser; (2) he was convicted of violating the federal wire fraud statute within ten years before the Commission instituted the proceeding against him; and (3) imposing a bar is in the public interest. *Uppal*, at *4. Weighing these factors, the ALJ found that a full collateral bar is appropriate. First, the ALJ found that Uppal was associated with an investment advisor. *Id.* Second, the ALJ found that Uppal met the second factor because he was convicted of violating the federal wire fraud statute. *Id.* at *5. Finally, The ALJ found that a collateral bar was in the public interest. In making this finding, the ALJ considered the public interest factors set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979). *Id.* at *5. The *Steadman* factors include the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations. *Id.* The ALJ considered

each of these factors in determining that a full collateral bar was in the public interest. *Uppal*. at *5-7.

Finally, the Commission, in its Statement Regarding Decision in *Bartko v. SEC*, directed that parties who request that a collateral bar be vacated fill out a form provided by the Commission. Included in the form is the following statement to which the applicant is asked to answer “yes” or “no”: “I am subject to a collateral bar based solely on conduct that occurred before July 22, 2010.” Uppal answered this question “yes.” The criminal indictment, Uppal’s plea agreement, the OIP, and the Initial Decision all state that Uppal’s conduct occurred during the period July 2007 to September 2013. Thus, Uppal cannot credibly claim that all of his misconduct occurred prior to July 22, 2010. His untruthful statement in his Request to Vacate is further verification that the collateral bars against Uppal should not be vacated.

III. CONCLUSION

For the reasons set forth above, the Commission should deny Uppal’s Request to Vacate the collateral bars imposed upon him.

Respectfully Submitted,



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Dated: September 5, 2023

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CERTIFICATE OF SERVICE

I, Jerrold H. Kohn, certify that true and correct copies of the Division of Enforcement's Brief in Opposition to Sachin K. Uppal's Request to Vacate Collateral Bars was served on the party listed below:

Sachin K. Uppal

[REDACTED]

(Via UPS Overnight)

Respectfully Submitted,

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Dated: September 5, 2023