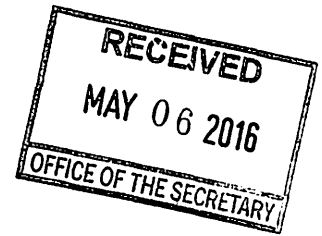


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-17035

In the Matter of

SHREYANS DESAI,

Respondent.

THE DIVISION OF ENFORCEMENT'S MEMORANDUM OF LAW IN
SUPPORT OF ITS MOTION FOR
SUMMARY DISPOSITION AGAINST SHREYANS DESAI

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The Division of Enforcement (“Division”) respectfully submits this motion for summary disposition against Respondent Shreyans Desai (“Desai”).

PRELIMINARY STATEMENT

Summary disposition is appropriate. Pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisors Act of 1940 (“Advisers Act”), the Division is entitled as a matter of law to an order that would bar Desai from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.

I. STATEMENT OF FACTS

A. The Civil Action Against Desai.

The Commission filed its Complaint against Desai and Shreysiddh Capital, LLC (“SSC”), a company that Desai founded and controlled, on September 27, 2011, in a civil action, Securities and Exchange Commission v. Shreyans Desai, et al., 2:11-cv-05597-WJM-MF, in the United States District Court for the District of New Jersey (“Civil Action”). Ex. A. The Court entered a Default Judgment against SSC on October 2, 2012, ordering SSC to be liable for disgorgement of \$116,858.29, plus prejudgment interest of \$13,865.33, and enjoining SSC from future violations of the federal securities laws. Ex. B.

The Commission filed an Amended Complaint against Desai on July 24, 2013 (the “Amended Complaint”). Ex. C. The Amended Complaint alleged that Desai made material misrepresentations to five investors and one advisory client to induce those individuals (collectively, “Investors”) to entrust him with their money. Id. at ¶¶1-2, 8-12,

18. Desai's misrepresentations to the Investors, set forth in the Amended Complaint, included falsely guaranteeing that investors would not lose money, guaranteeing high rates of return on investments, and stating that SSC was a broker registered with the Commission and that Desai was a licensed financial adviser. Id. The Amended Complaint also charged that Desai misappropriated investor money for personal use, purposefully misled Investors regarding the returns earned in their accounts and the value of their investments, and continued to mislead Investors about SSC's registration status. Id. at ¶¶ 12-18. The Amended Complaint charged Desai with violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. 240.10b-5], Section 15(a) of the Exchange Act [15 U.S.C. 78(o)(a)], and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. 80b-6(1) and 80b-6(2)]. Id. at ¶¶ 20-33.

On November 5, 2015, finding that there were no genuine issues as to any of the material facts or evidence presented by the Commission, the District Court entered an Opinion and Order granting summary judgment against Desai on all claims and ruled that the Commission was entitled to all of the relief that it sought against Desai, including an injunction, disgorgement plus prejudgment interest, and a civil penalty. Ex. D (Opinion) and E (Order).

As set forth in the opinion granting summary judgment against Desai, between June 2009 and May 2010, Desai induced five investors to trade securities through SSC by making numerous misrepresentations to the investors, including that all investor funds were insured, that SSC was a registered broker-dealer, that investor funds would be kept

in segregated accounts, and that Desai would take as his compensation half of any profits he earned on behalf of the investor. Ex. D at 2.

In total, Desai received \$247,558.29 from these investors. Id. The District Court found that Desai misappropriated investor money by failing to transfer a portion of the money received to any investment account and by otherwise using investor money for expenses unrelated to the investor's investments. Id. According to the District Court's findings, to conceal his misconduct, Desai provided some investors with false account statements showing extremely high profits in the investor's account. Id. at 2-3. Desai also convinced an advisory client to pay Desai \$68,021 in commissions by misleading the client regarding the value of the client's investment account and the profits that Desai purported to earn in the account. Id. at 3.

When granting the Commission's motion for summary judgment against Desai, Judge Martini found that an injunction was warranted because Desai's fraud spanned a period of more than two years, and because Desai misappropriated investor funds. Id. at 8-9. In addition, when confronted by investors, Desai "attempted to conceal the actual value of the accounts and sought to maintain control of the funds. This effort to mask his violations of federal securities law demonstrates a high degree of scienter." Id. at 9. Judge Martini also found that "Desai's appeal of his previously agreed upon guilty plea [in the parallel criminal action] evidences a failure to recognize the wrongfulness of his conduct, and leads the Court to conclude that there is a substantial likelihood that Desai will engage in future violations of the federal securities laws if not enjoined." Id.

On November 30, 2015, the Court issued a Final Judgment against Desai, ordering Desai to pay a civil penalty of \$167,229.39, ordering Desai to pay disgorgement

of \$167,229.39 plus prejudgment interest, and permanently enjoining Desai from violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, Section 15(a) of the Exchange Act, and Sections 206(1) and 206(2) of the Advisers Act. Ex. F.

Despite the considerable, undisputed evidence introduced against Desai in the Civil Action and the fact that Desai had already pleaded guilty to the same fraud upon the same investors in the parallel criminal action (discussed infra at pp. 4-6), Desai filed a motion to reconsider the judgment in the Civil Action on December 14, 2015, arguing that the District Court's finding that he had defrauded one of the investors was "pure fantasy." Ex. G at 3. The District Court denied Desai's motion on February 29, 2016. Ex. H.¹ Desai filed a Notice of Appeal of the February 29, 2016 Opinion and Order denying Desai's Motion for Reconsideration to the U.S. Court of Appeals for the Third Circuit on March 14, 2016.²

B. Desai's Criminal Conviction.

On May 5, 2014, Desai pleaded guilty to two counts of wire fraud in violation of Title 18 of the United States Code Section 1343 before the United States District Court

¹ In his Motion for Reconsideration Desai raised discovery-related issues similar to those raised by Desai in this proceeding. While these issues have no relevance to this follow-on administrative proceeding, where the only question is whether the underlying civil injunction and criminal judgment were in fact entered, Desai's discovery-related arguments were dismissed by Judge Martini who noted that some of the discovery that Desai complained he had been unable to pursue was clearly prohibited by the Federal Rules of Civil Procedure and that Desai had not otherwise been constrained from conducting discovery. Ex. H at 2; see also Ex. D at 5.

² An appeal of the District Court's Denial of Desai's Motion for Reconsideration is not grounds to defer decision in this administrative proceeding. See Daniel Imperato, 2014 SEC LEXIS 2409, *17 (SEC 2014) ("[t]he Commission has repeatedly held that the pendency of an appeal is not grounds to defer decision in an administrative proceeding").

for the District of New Jersey, in United States v. Shreyans Desai, 2:12-cr-0330-WJM-01 (“Criminal Action”).³ Ex. L. The counts of the Superseding Indictment to which Desai pleaded guilty alleged that, over a more than two year period, Desai obtained and maintained control over investor funds by making numerous misrepresentations to investors, including that Desai held a license to trade securities and had previously worked for TD Ameritrade, that SSC was a member of the Financial Industry Regulatory Authority (“FINRA”), that funds invested with SSC were insured by the Securities Investor Protection Corporation (“SIPC”) with zero risk of loss of principal, that Desai had earned high rates of return for a past investor, and that investors would enjoy high rates of return as a result of Desai’s execution of securities transactions on behalf of the investors. Ex. K at ¶¶ 2, 6, 11, 12. The counts to the Superseding Indictment to which Desai pleaded guilty further alleged that Desai misappropriated money from investors and attempted to conceal this by making numerous misrepresentations to investors regarding the value of their accounts. Id. at ¶¶ 9-10, 16-18.

At Desai’s sentencing, Judge Martini expressed concern that Desai’s conduct “went on for so long . . . It wasn’t one or two instances in which [Desai] puffed something, or made some puffery. He repeatedly misled people that appeared to be unsophisticated and vulnerable investors who trusted him. . . . His conduct was repeated and excessive.” Ex. M at 27-28. Judge Martini stated that he did not believe that Desai would be deterred from future misconduct without a custodial sentence and opined that

³ The United States Attorney’s Office for the District of New Jersey (USAO) filed a Criminal Complaint against Desai on September 26, 2011 in the matter U.S. v. Shreyans Desai, 12-cr-00330 (WJM). (Ex. I). An indictment was returned against Desai on May 8, 2012 (Ex. J) and a superseding indictment (the “Superseding Indictment”) was returned on January 8, 2013 (Ex. K).

Desai “appears to be somewhat manipulative. And while he says he’s remorseful, I don’t get a genuine sense of his full remorsefulness here.” *Id.* at 28-29.

On December 5, 2014, a judgment in the criminal case was entered against Desai. Desai was sentenced to a prison term of 15 months followed by three years of supervised release and ordered to pay restitution in the total amount of \$121,260. Ex. N.

Despite Desai’s statements during his plea and sentencing hearings, in which Desai agreed that he had defrauded investors and purported to express remorse for his conduct, on January 15, 2015, Desai filed a *pro se* appeal of the judgment with the U.S. Court of Appeals for the Third Circuit. *United States v. Desai*, No. 15-1105 (3d Cir. Jan. 15, 2015). The Third Circuit denied Desai’s appeal on August 21, 2015. Desai filed a petition for writ of certiorari with the United States Supreme Court on February 4, 2016.⁴

II. THE DIVISION’S MOTION FOR SUMMARY DISPOSITION SHOULD BE GRANTED AND A PERMANENT INDUSTRY BAR AND PENNY STOCK BAR SHOULD BE IMPOSED.

A. The Standard for Summary Disposition.

Rule 250(a) of the Commission’s Rules of Practice permits a party, with leave of the hearing officer, to move for summary disposition of any or all the OIP’s allegations and provides that a motion for summary disposition should be granted if there is “no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law.” Summary disposition is particularly

⁴ Desai’s failed appeals and subsequent petition for a writ of certiorari are not grounds to defer decision in this administrative proceeding. See *Michael D. Montgomery*, 2014 SEC LEXIS 2317, *5 (SEC 2014) (“a respondent’s appeal of, or collateral challenge to, his conviction is not grounds to defer decision in an administrative proceeding”).

appropriate in a follow-on proceeding such as this one.⁵

B. The Civil Injunction Against Desai and Desai's Criminal Conviction Establish the Basis for Administrative Relief.

Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act authorizes this Court to impose a full collateral bar against Desai, prohibiting Desai from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization if: (1) Desai was associated with a broker-dealer or investment adviser, respectively, during the time period of his misconduct; (2) Desai willfully violated provisions of the Securities Act, Exchange Act, or Advisers Act, was criminally convicted for various offenses, including conduct arising out of Desai's involvement in the securities industry, or was enjoined by court order from acting as a broker-dealer or investment adviser or from engaging in a practice or activity in connection with the purchase or sale of any security; and (3) a bar would be in the public interest. See Section 15(b)(6) of the Exchange Act, 15 U.S.C. § 78o(b)(6); Section 203(f) of the Advisers Act, 15 U.S.C. § 80b-3. Section 15(b)(6) also allows the Court to enter an order prohibiting Desai from participating in any offering of penny stock. 15 U.S.C. § 78o(b)(6)(A).

The first two factors are met. Desai was found by the District Court to have been acting as an unregistered broker (as was SSC, with which Desai was associated) and as an

⁵ See, e.g., Gordon A. Driver, Initial Decision Release No. 432, 2011 SEC LEXIS 3271, at *5 (Sept. 22, 2011) (noting Commission approval of use of summary disposition procedure in "cases such as this one where the respondent has been enjoined or convicted"); Jeffrey L. Gibson, Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at *20-21 & n. 24 (Feb. 4, 2008) (collecting cases), pet. for rev. den., Gibson v. SEC, 561 F.3d 548 (6th Cir. 2009) (summary disposition granted and broker-dealer and investment adviser associational bars issued based on entry of injunctions).

investment adviser and admitted, during his plea allocution in the Criminal Action, to conduct that evidences that Desai was acting as a broker and an investment adviser. Ex. D at 7-8; Ex. L at 13-14. Desai was found liable in the Civil Action for numerous willful violations of the anti-fraud provisions of the federal securities laws. Exs. D-F. As a result of these violations, Desai was enjoined from future violations of the antifraud provisions of the federal securities laws (Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder) and Section 15(a) of the Exchange Act. Ex. F. Desai also pleaded guilty to two counts of wire fraud in the Criminal Action. Exs. L and N. During his plea allocution, Desai admitted that he knowingly made misrepresentations to convince investors to entrust him with their money, knowingly lied to investors about the value of their accounts, and stole from investors. Ex. L at 14-15.

The final prong of this analysis – whether a collateral bar would be in the public interest – is also clearly met. In considering whether it is in the public interest to impose a bar, the Commission considers 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. Eric Butler, Exchange Act Release No. 65204, 2011 SEC LEXIS 3002 (Aug. 26, 2011) at *13-14 & n. 21 (citing Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff’d on other grounds, 450 U.S. 91 (1981)). The inquiry is a “flexible one, and no one factor is dispositive.” Id. at *14 & n. 22 (quoting David Henry Disraeli, Exchange Act. Rel. No. 57027, 2007 SEC LEXIS 3015, at *61 (Dec. 21, 2007), pet. denied, Disraeli v. SEC, 334 F. App’x 334 (D.C. Cir. 2009)).

Moreover, the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. See, e.g. Adam Harrington, Initial Decision Release No. 484, 2013 SEC LEXIS 1140 (SEC 2013); Christopher A. Lowry, 55 SEC 1133, 1145 (SEC 2002), aff'd 340 F.3d. 501 (8th Cir. 2003). The Commission has made clear that "absent 'extraordinary mitigating circumstances,' an individual who has been convicted cannot be permitted to remain in the securities industry." Frederick W. Wall, Exchange Act Release No. 52467, 2005 SEC LEXIS 2380 (September 19, 2005) at *14 & n. 16 (quoting John S. Brownson, Exchange Act Release No. 46161, 2002 SEC LEXIS 3414, at *2 (July 3, 2002), pet. denied, Brownson v. SEC, 66 F. App'x 687 (9th Cir. 2009); see also Butler, 2011 SEC LEXIS 3002, at *18 & n. 27.

All of the factors laid out in Steadman weigh in favor of the imposition of lifetime industry and penny stock bars against Desai. Desai engaged in repeated, egregious misconduct by defrauding unsophisticated and vulnerable investors for a period of more than two years, during which Desai repeatedly lied to investors to convince them to provide him with control over their money. Desai also misappropriated a significant amount of investor funds and misled investors as to the value of their accounts, including by creating fictitious account statements, in an effort to conceal his theft and maintain control over investor funds.

In addition, Desai has failed to demonstrate that he has taken responsibility for his conduct or that he feels true remorse for the harm he caused investors. After Desai's plea allocution, Judge Martini opined that Desai seemed "manipulative" and did not seem to

feel genuine remorse for his behavior. Ex. M at 28-29. Desai's appeal of his guilty plea and his efforts to seek reconsideration of the Final Judgment in the Civil Action, see Ex. D. at 9 and Ex. G, further evidence that Desai has not recognized the wrongful nature of his conduct and cannot, with any degree of sincerity, provide assurances against future violations.

CONCLUSION

For the foregoing reasons, the Division requests that the Court grant Summary Disposition in favor of the Division and permanently bar Desai from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in an offering of penny stock.

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CERTIFICATE OF SERVICE


I, Christina M. McGill, certify that on May 6, 2016, I caused true and correct copies of the Division of Enforcement's Motion for Summary Disposition Against Shreyans Desai, the Division of Enforcement's Memorandum of Law in Support of Its Motion of Summary Disposition Against Shreyans Desai and the Declaration of Christina M. McGill, dated May 6, 2016, with exhibits attached thereto, to be filed and served on the following parties as indicated:

The Honorable Brenda P. Murray (By Hand)
Chief Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

Brent J. Fields, Secretary (By Hand)
Office of the Secretary
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Shreyans Desai (By Certified Mail and By UPS Overnight Delivery)


Respondent, *pro se*


Christina M. McGill
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