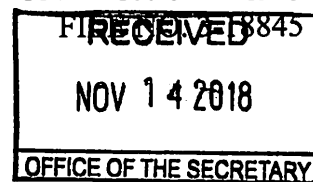


ADMINISTRATIVE PROCEEDING



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

3-18845

In the Matter of

Ismail Elmas,

Respondent

**DIVISION OF ENFORCEMENT'S MOTION FOR ENTRY OF DEFAULT AND
SANCTIONS AGAINST RESPONDENT ISMAIL ELMAS**

November 14, 2018

Division of Enforcement
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The Division of Enforcement (“Division”) hereby moves for the entry of default against Respondent Ismail Elmas (“Elmas”) pursuant to Commission Rules of Practice 220(f), 17 C.F.R. § 201.220(f), and 155(a), 17 C.F.R. § 201.220(a), as well as for the entry of sanctions against Elmas pursuant to Securities Exchange Act of 1934 (“Exchange Act”) Section 15(b), 15 U.S.C. § 78o(b), and Investment Advisers Act of 1940 (“Advisers Act”) Section 203(f), 15 U.S.C. § 80b-3(f).

I. INTRODUCTION

This is a follow-on administrative proceeding based on an entry of criminal conviction against Elmas. On September 27, 2018, the Commission entered an Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, and Notice of Hearing (“OIP”) against Elmas. As Elmas failed to file an Answer to the OIP, the Division hereby moves for entry of default against Elmas pursuant to Commission Rules of Practice 220(f), 17 C.F.R. § 201.220(f), and 155(a), 17 C.F.R. § 201.155(a). The Division also requests, pursuant to Rule 155(a) of the Commission Rules of Practice, that the allegations of the OIP be deemed as true and that the proceeding against Elmas be determined upon consideration of the record and the allegations of the OIP. Finally, the Division moves for entry of an order barring Elmas from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization pursuant to Exchange Act Section 15(b), 15 U.S.C. § 78o(b), and Investment Advisers Act Section 203(f),

15 U.S.C. § 80b-3(f), as well as from participating in an offering of penny stock under Section 15(b)(6) of the Exchange Act, 15 U.S.C. § 78o(b)(6).

II. BACKGROUND

A. Procedural Background of This Administrative Proceeding

On September 27, 2018, the Commission entered the OIP, ordering Elmas to file his Answer to the allegations contained in the OIP within twenty days of service, as provided by Commission Rule of Practice 220(b), 17 C.F.R. § 201.220(b). (Grimm Decl. ¶2, Ex. 1). On October 2, 2018, the Office of the Secretary served Elmas with the OIP via United States Postal Service Certified Mail. (Grimm Decl. ¶¶ 3-4, Exs. 2, 3). Elmas failed to file an Answer. (Grimm Decl. ¶ 5).

B. Factual Background

Elmas, age 53, was associated with various broker-dealers and investment advisers from 1996 until July 2014.¹ (Grimm Decl. ¶¶ 2, 6, Exs. 1, 4). From November 2007 to January 2013, Elmas was a registered representative, employee, and associated person of Cuna Brokerage Services, Inc. (“Cuna”). (*Id.*). At the time of his association, Cuna was registered with the Commission as a broker-dealer and as an investment adviser. (Grimm Decl. ¶¶ 2, 7, Exs. 1, 5). From January 2013 to July 2014, Elmas was a registered representative, employee, and associated person of Cuso Financial Services, L.P. (“Cuso”). (Grimm Decl. ¶¶ 2, 6, Exs. 1, 4). At the time of his association, Cuso was registered with the Commission as a broker-dealer and as an investment adviser. (Grimm Decl. ¶¶ 2, 8, Exs. 1, 6).

On October 21, 2014, Elmas pleaded guilty to one count of wire fraud in violation of 18 U.S.C. § 1343 before the United States District Court for the Eastern District of Virginia, in

¹ Elmas was associated with a regulated entity for all but three months of this time-period.

United States v. Ismail Elmas, No. 1:14-CR-00328-AJT-1 (E.D. Va.). (Grimm Decl. ¶¶ 2, 9, Exs. 1, 7). The wire fraud count to which Elmas pleaded guilty alleged, among other things, that, from at least 2012 through August 2014, Elmas misappropriated client funds for his personal use and misrepresented to clients that the funds were being used for legitimate investment purposes. (Grimm Decl. ¶ 2, Ex. 1).

In the Statement of Facts accompanying his plea agreement, Elmas admitted certain facts. (Grimm Decl. ¶10, Ex. 8). Elmas stated that he misappropriated client funds given to him for investment in his capacity as an investment adviser, using the funds for his own purposes. (*Id.*) Many of the clients who Elmas defrauded were seniors, widows, or otherwise vulnerable persons. (*Id.*)

In March 2014, Elmas recommended that a widowed client move her money to a “Certificate of Deposit” to achieve better interest returns and increased stability. (*Id.*) In reality, Elmas transferred \$100,000 from her retirement account into a bank account in the name of I.E. Financial Solutions. (*Id.*) Elmas owned and operated the I.E. Financial Solutions account. (*Id.*) In April 2013, Elmas recommended to another widow that she invest \$90,000, rather than use the money to pay off her mortgage. (*Id.*) Ultimately, Elmas transferred the funds from the widow’s money market account into the I.E. Financial Solutions bank account without disclosing to the widow the identity of the investment that he selected for her. (*Id.*) Additionally, in November 2013, Elmas fraudulently transferred \$141,040.78 into a Scottrade, Inc. account that he controlled, rather than into an individual retirement account as directed. (*Id.*)

Elmas stipulated that, in total, more than ten victims lost an aggregate amount of between \$1,000,000 and \$7,000,000 as a result of his fraudulent scheme. (*Id.*) He also admitted that he acted “willfully, knowingly, and with the specific intent to violate the law.” (*Id.*)

By Judgment entered on March 20, 2015, the District Court sentenced Elmas to 126 months of incarceration and two years of supervised release and ordered him to pay criminal restitution in the amount of \$2,976,180.03. (Grimm Decl. ¶¶ 2, 11, Exs. 1, 9).

III. ARGUMENT

A. Elmas Is in Default and the Findings of the OIP Should Be Deemed To Be True and Considered Along with the Record

Rule 220(f) of the Commission Rules of Practice specifies that, where a “respondent fails to file an answer . . . within the time provided, such person may be deemed in default pursuant to Rule 155(a).” 17 C.F.R. § 201.220(f). In turn, Commission Rule of Practice 155(a) allows the Commission to “determine the proceeding against [the respondent] upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed as true.” 17 C.F.R. § 201.155(a).

As Elmas failed to file an Answer within twenty days of service as ordered in the OIP, he should be deemed to be in default pursuant to Rule 155(a). Accordingly, the Division moves for default to be entered, for the findings of the OIP be deemed true, and for the factual record set forth above to be considered in this proceeding.

B. The Record Authorizes the Imposition of Sanctions Against Elmas

Section 15(b)(6)(A) of the Exchange Act, in relevant part, allows the Commission to censure, place limitations on, suspend, or bar from association with any “broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of a penny stock,” any person who “has been convicted of any offense specified in [Section 15(b)(4)(B)] within 10 years of the commencement of the proceedings” if the person was associated with a broker or dealer at the time of the alleged misconduct and the Commission finds that such a sanction is in

the public interest. 15 U.S.C. § 78o(b)(6)(A). Exchange Act Section 15(b)(4)(B), in relevant part, specifies “any felony or misdemeanor . . . which the Commission finds . . . involves the violation of section . . . 1343 . . . of title 18, United States Code.” 15 U.S.C. § 78o(b)(4)(B). Section 3(a)(18) of the Exchange Act provides that the term “person associated with a broker or dealer” includes “any employee of such broker or dealer.” 15 U.S.C. § 78c(a)(18).

Likewise, Section 203(f) of the Advisers Act provides, in relevant part, that the Commission, by order, shall censure or place limitations on, suspend, or bar from association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, any person who “has been convicted of any offense specified in [Section 203(e)(2)-(3)] within ten years of the commencement of the proceedings” if the person was associated with an investment adviser at the time of the alleged misconduct and the Commission finds that such a sanction is in the public interest. 15 U.S.C. § 80b-3(f). Section 203(e)(2) specifies “any felony or misdemeanor . . . which the Commission finds . . . involves the violation of section . . . 1343 . . . of title 18, United States Code.” 15 U.S.C. § 80b-3(e)(3). Section 202(a)(17) of the Advisers Act provides that the term “person associated with an investment adviser” includes “any employee of such investment adviser.” 15 U.S.C. § 80b-2(a)(17).

Elmas was convicted of wire fraud in violation of 18 U.S.C. § 1343 for misconduct that occurred from 2012 until July 2014. The misconduct occurred while he was an employee of Cuna Brokerage Services, Inc. and Cuso Financial Services, L.P., both of which were registered with the Commission as broker-dealers and as investment advisers. Accordingly, it is appropriate to consider sanctions against Elmas pursuant to Section 15(b)(6)(A) of the Exchange Act and Section 203(f) of the Advisers Act. *See Elliott v. S.E.C.*, 236 F.3d 86, 87 (11th Cir. 1994) (*per*

curiam) (finding it beyond question that a defendant who has been convicted of an offense specified in the statute within the past 10 years falls within the category of those who may be barred).

C. A Permanent Associational Bar is in the Public Interest Pursuant to the *Steadman* Factors

The Commission considers the following factors in determining whether a sanction is in the public interest:

[1] the egregiousness of the [respondent's] actions, [2] the isolated or recurrent nature of the infraction, [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 that the [respondent's] occupation will present opportunities for future violations.

Steadman v. S.E.C., 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see In The Matter of Gary M. Kornman*, Exchange Act Rel. No. 2840, AP File No. 3-12716, 2009 WL 367635, at *6 (Feb. 13, 2009) (Commission Opinion). The inquiry “into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive.” *In the Matter of Conrad P. Seghers*, Investment Advisers Act Rel. No. 2656, AP File No. 3-12433, 2007 WL 2790633, at *4 (Sept. 26, 2007) (Commission Opinion), *petition for review denied*, 548 F.3d 129 (D.C. Cir. 2008).

Here, Elmas repeatedly misappropriated for personal use client funds that were given to him in his capacity as a member of the securities industry. His misconduct spanned approximately two years and involved the transfer of client funds from at least ten clients into accounts that he owned or controlled. Many of his clients were senior citizens, widowed, or otherwise vulnerable, and they suffered an aggregate loss of between \$1,000,000 and \$7,000,000. His misconduct thus demonstrates a repeated, egregious abuse of the trust placed in

him as a securities professional. See *In the Matter of John S. Brownson*, Exchange Act Rel. No. 46161, AP File No. 3-10295, 2002 WL 1438186, at *3 (July 3, 2002) (Commission Opinion) (finding an egregious abuse of trust where respondent made recommendations to his clients motivated by potential personal gain), *petition for review denied* 592 F.3d 173 (D.C. Cir. 2010). When he pleaded guilty to wire fraud, Elmas admitted that he acted “willfully, knowingly, and with the specific intent to violate the law.” Accordingly, Elmas’ misconduct also involved a high degree of scienter.

Elmas worked in the securities industry as an associated person of a broker-dealer or investment adviser for nearly eighteen years prior to his conviction for wire fraud. He is currently 53 years old and serving a 126-month sentence. Without an associational bar, Elmas might well attempt to re-enter the securities industry upon his release and could once again misappropriate client funds. Thus, at least four of the *Steadman* factors favor the issuance of a permanent associational bar against Elmas pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Investment Adviser Act.

D. A Penny Stock Bar Is Likewise Appropriate

Penny stocks are “low-priced, highly speculative stocks generally sold . . . over-the-counter.” *Koch v. S.E.C.*, 177 F.3d 784, 785 n.1 (9th Cir. 1999). As with associational bars, penny stock bars are imposed when they are deemed to be appropriate and in the public interest. See 15 U.S.C. § 78o(b)(6). Thus, the *Steadman* factors, including the egregiousness of Elmas’ misconduct and the likelihood that he might seek a future position that would allow opportunities for interaction with investors, on balance, support the imposition of a penny stock bar against Elmas pursuant to Section 15(b)(6) of the Exchange Act.

Although Elmas has not participated in a penny stock offering, his misconduct bears some resemblance to the penny stock industry inasmuch as he solicited relatively low sums of money from individual clients for purported investments that did not involve securities traded on a national securities exchange. Elmas admitted to so deceiving vulnerable clients and misappropriating their funds. Thus, imposition of a penny stock bar against him would be in line with the purpose set forth in the legislative history of the Penny Stock Reform Act of 1990, which found that the penny stock market is “very attractive to unscrupulous securities professionals who are looking to deceive the public.” *See* H.R. Rep. No. 10-617, at 1422 (1990). Imposition of a penny stock bar would take into account the legislative history’s warning that the penny stock industry is “fraught with repeat offenders of state and federal securities laws and other felons.” *See* H.R. Rep. No. 10-617, at 1422-23 (1990).

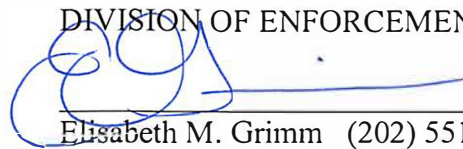
IV. CONCLUSION

The Supreme Court has explained that “[t]he primary objective of the federal securities laws [is the] protection of the investing public and the national economy through the promotion of a ‘high standard of business ethics . . . in every facet of the securities industry.’” *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 315 (1985). Moreover, the Commission has recognized that “[t]he securities industry presents a great many opportunities for abuse and overreaching and depends heavily on the integrity of its participants.” *In the Matter of Bruce Paul*, Exchange Act Release No. 21789, AP File No. 3-6271, 1985 WL 548579, at *7 (Feb. 26, 1985) (Commission Opinion). In order to recognize this objective and prevent future abuse, the Commission should enter an order finding Elmas to be in default and imposing a permanent associational bar and a penny stock bar.

Dated: November 14, 2018

Respectfully submitted,

DIVISION OF ENFORCEMENT



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In the Matter of Ismail Elmas
Administrative Proceeding File No. 3-18845
Service List

Pursuant to Commission Rule of Practice 151, 17 C.F.R. § 201.151, I certify that the attached:

Division of Enforcement's Motion for Entry of Default and Sanctions Against
Respondent Ismail Elmas

was filed with the Office of the Secretary of the Commission and served by U.S. Mail, on November 14, 2018, as follows:

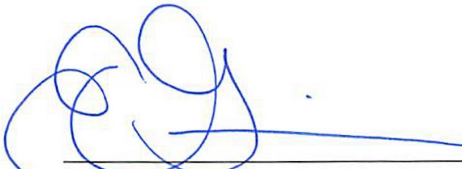
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Dated: November 14, 2018



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