

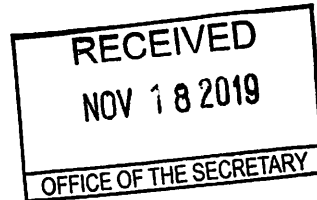
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19006

In the Matter of

ERNEST J. ROMER, III,

Respondent.



DIVISION OF ENFORCEMENT'S MOTION FOR DEFAULT AND OTHER RELIEF

I. Introduction

The Division of Enforcement (the "Division"), pursuant to Rules 155(a) and 220(f) of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a) and 201.220(f), moves for entry of an Order finding Respondent Ernest J. Romer, III ("Romer") in default and determining this proceeding against him upon consideration of the record. The Division sets forth the grounds below.

II. History of the Case

The Commission issued the Order Instituting Proceedings ("OIP") on February 22, 2019 pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"). In summary, the OIP alleges that Romer, while associated with a broker-dealer, fraudulently converted to his own use without consent of his principal, money or personal property of his principal having a value of ranging from between \$20,000 to \$50,000 and/or \$100,000 or more, that came into his possession or under his charge or control by virtue of his relationship with the principal. These facts led to Romer's conviction in related criminal cases against him.

On August 29, 2019, the Commission issued an Order to Show Cause recounting that Romer had been served but had not filed an answer, and ordering him to show cause by October 14, 2019 why he should not be found in default and have the proceeding determined against him due to his failure to answer or otherwise defend the proceeding.¹ That date passed without a response from Romer.

III. Memorandum of Law

A. Romer's Criminal Case

Between July 30, 2018 and October 9, 2018, Romer pled “no contest” to 13 counts of embezzlement in violation of Michigan Compiled Laws 750.174, a felony, before the Macomb County Circuit Court in People v. Ernest Julius Romer III.² On December 5, 2018, Romer was convicted on the 13 counts of embezzlement and sentenced to 85 to 240 months in prison and ordered to pay \$ 2,650,000 in restitution.³

B. Facts

Based on Romer's default, the allegations of the OIP “may be deemed to be true.” 17 C.F.R. § 201.155(a). A respondent in an administrative proceeding “is collaterally estopped

¹ *Ernest J. Romer, III*, Exch. Act Rel. No. 86820, 2019 WL 4073786.

² See Exh. 1 (Combined Referral To Probation For Investigation/Case Docket Sheet (hereinafter referred to as “Plea Form/Docket”), Case No. 2017-004385-FH (Nov. 30, 2017)); Exh. 2 (Plea Form/Docket, Case No. 2017-004386-FH (Nov. 30, 2017)); Exh. 3 (Plea Form/Docket, Case No. 2018-000798-FH (March 8, 2018)); Exh. 4 (Plea Form/Docket, Case No. 2018-000799-FH (March 8, 2018)); Exh. 5 (Plea Form/Docket, Case No. 2018-000800-FH (March 8, 2018)); Exh. 6 (Plea Form/Docket, Case No. 2018-001614-FH (May 17, 2018)); Exh. 7 (Plea Form/Docket, Case No. 2018-001615-FH (May 17, 2018)); Exh. 8 (Plea Form/Docket, Case No. 2018-001618-FH (May 17, 2018)); Exh. 9 (Plea Form/Docket, Case No. 2018-001622-FH (May 21, 2018)); Exh. 10 (Plea Form/Docket, Case No. 2018-002858-FH (August 20, 2018)); Exh. 11 (Plea Form/Docket, Case No. 2018-002859-FH (August 20, 2018)); Exh. 12 (Plea Form/Docket, Case No. 2018-002860-FH (August 20, 2018)); and Exh. 13 (Plea Form/Docket, Case No. 2018-003258-FH (September 20, 2018)) (Cir. Ct., Macomb Cty. Mich.).

³ See Exhs. 1-13

from relitigating the factual findings and legal conclusions underpinning his criminal conviction.”
See James S. Tagliaferri, Exch. Act Rel. No. 985, at 4, 2016 WL 1158233 (Mar. 23, 2016)(citations omitted).

The OIP as well as the facts enumerated in Romer’s pleas of “no contest” establish the following:

From 2005 through July 2012, Romer was a registered representative associated with Leonard & Company, a broker-dealer registered with the Commission. From July 2012 through September 2012, Romer was a registered representative associated with L.M. Kohn & Company, a broker-dealer registered with the Commission. And, from October 2012 until his termination in January 2017, Romer was a registered representative associated with CoreCap Investments, Inc., (“CoreCap”), a broker-dealer registered with the Commission since 1996.⁴

While associated with CoreCap,⁵ Romer fraudulently converted for his own use money or personal property of his principal having a value of ranging from between \$20,000 to \$50,000 and/or \$100,000 or more, that came into his possession or under his charge or control by virtue of his relationship with the principal in violation of Michigan Compiled Laws 750.174.⁶

C. Entry of Default is Appropriate

Under Rule 155(a) of the Commission’s Rules of Practice, a party who fails to file a timely answer “may be deemed to be in default and the Commission ‘may determine the proceeding against that party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true’ ” 17 C.F.R. § 201.155(a). Here, Romer has

⁴ OIP ¶ II.A.1.

⁵ *See* Exhs. 1-13 (According to the “Party Charge Information” contained in the Dockets, Romer’s offenses occurred between December 13, 2012 and September 20, 2018. During this time period, Romer was associated with CoreCap).

⁶ OIP ¶ II.B.

not filed an answer and has not responded to the order to show cause. Accordingly, the proceeding should be determined against him based on the record.

The facts established by Romer's default and his conviction show that the Division is entitled to the relief it seeks under Exchange Act Section 15(b)(6)(A), which provides in relevant part:

With respect to any person . . . at the time of the alleged misconduct, who was associated with a broker . . . the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

* * * *

(ii) has been convicted of any offense specified in [Exchange Act Section 15(b)(4)(B)] within 10 years of the commencement of the proceedings under this paragraph

Each of the requirements of the provisions—timely issuance of the OIP, conviction under a qualifying statute, and misconduct committed while Romer was associated with a broker-dealer—are satisfied here.

a. The Division Timely Filed this Action

The Division must commence a proceeding under Section 15(b)(6)(A)(ii) within “10 years” of the criminal conviction. *See Joseph Contorinis*, Exch. Act Rel. No. 72031, at 4-6, 2014 WL 1665995 (Apr. 25, 2014) (10-year limitations period governs Section 15(b)(6)(A)(ii) proceeding; limitations period runs from date of conviction, not underlying conduct). Here, Romer was convicted on December 5, 2018, and the OIP was issued on February 22, 2019. Therefore, this matter was timely filed.

b. Romer Was Convicted of a Qualifying Offense

Under the Exchange Act, the Commission may sanction Romer for an offense that “involves . . . embezzlement, fraudulent conversion, or misappropriation of funds.” *See* Exchange Act Sections 15(b)(4)(B)(iii), 15(b)(6)(A)(ii). Here, Romer’s conviction was for embezzlement, in violation of Michigan Compiled Laws 750.174, and the underlying conduct involved the fraudulent conversion and misappropriation of funds. Therefore this condition is satisfied.

c. Romer Was Associated with a Broker at the Time of his Misconduct

Exchange Act Section 15(b)(6)(A) requires that Romer be associated with a broker at the time of the misconduct. Here, deemed admitted is the OIP’s allegation that Romer was associated with (“CoreCap”), a broker-dealer registered with the Commission from October 2012 until January 2017. According to the court records reflected in Exhs. 1-13, Romer’s misconduct took place between December 13, 2012 and September 20, 2018. Thus, Romer was associated “at the time of the alleged misconduct.” *See Kornman v. SEC*, 592 F.3d 173, 184 (D.C. Cir. 2010) (“The Commission properly relied on the ordinary meaning of alleged ‘misconduct,’ which refers to allegedly ‘unlawful or improper behavior.’”).

d. Industry and Penny Stock Bars Are Appropriate Sanctions

In determining whether “industry and penny stock bars . . . are in the public interest,” the Commission considers, among other things:

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 or her conduct, and the likelihood that the respondent’s occupation will present opportunities for future violations.

Vladimir Boris Bugarski, Exch. Act Rel. No. 66842, at 5 & n.18, 2012 WL 1377357 (Apr. 20, 2012) (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981)). “Absent extraordinary mitigating circumstances, an individual who has been convicted cannot be permitted to remain in the securities industry.” *Frederick W. Wall*, Exch. Act Rel. No. 52467, at 8, 2005 WL 2291407 (Sept. 19, 2005) (quotation omitted); *accord Shreyans Desai*, Exch. Act Rel. No. 80129, at 6, 2017 WL 782152 (Mar. 1, 2017).

Here, these factors weigh in favor of industry and penny stock bars. First, Romer’s actions were egregious. His conviction on 13 counts of embezzlement establishes a knowing conversion of a significant amount of funds for his own use.

The second factor also weighs against Romer as he was convicted not on one nor two episodes of embezzlement, but on 13, which occurred over a number of years. As to the third factor, the level of scienter is high, giving rise to a criminal conviction.

With respect to the fourth and fifth factors, Romer has not participated in this matter thus providing no assurances that he will avoid *future* violations of the law. Although “[c]ourts have held that the existence of a past violation, without more, is not a sufficient basis for imposing a bar, . . . the existence of a violation raises an inference that it will be repeated.” *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, at 10 n.50, 2013 WL 3864511 (July 26, 2013) (quotation and alternations omitted). Romer has offered no evidence to rebut that inference.

Sixth, although Romer is currently in custody, he will eventually be released, and unless barred from the securities industry he will have the chance to harm investors.

IV. Conclusion

For the reasons discussed above, the Division asks the Commission to sanction Romer by issuing a penny stock bar and barring him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent or NRSRO.

November 13, 2019

Respectfully submitted,

/s/ Steven L. Klawans

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CERTIFICATE OF SERVICE

I hereby certify that an original and three copies of the foregoing were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549-9303, and that a true and correct copy of the foregoing has been served on this 13th day of November 2019, on the following persons entitled to notice:

VIA USPS REGULAR MAIL

Mr. Ernest J. Romer, III, # [REDACTED]

[REDACTED]

[REDACTED] County Road [REDACTED]

Newberry, MI [REDACTED]

/s/ Steven L. Klawans

Steven Klawans

Assistant Regional Director