

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19606

In the Matter of

THOMAS H. VETTER,

Respondent.

**DIVISION OF ENFORCEMENT’S REPLY
IN SUPPORT OF ITS MOTION FOR
SUMMARY DISPOSITION**

In accordance with the Commission’s April 27, 2023 Order Extending Time for Respondent to File a Brief Opposing Summary Disposition and for the Division of Enforcement to File a Reply (“April 27 Order”), the Division of Enforcement respectfully files this timely Reply in support of its pending Motion for Summary Disposition (“Motion”).¹

I. Introduction

This is a follow-on proceeding arising from entry of a civil securities broker-dealer registration injunction and an anti-fraud injunction against Respondent Thomas H. Vetter (“Vetter”) by the United States District Court for the District of Maryland. As described at length in the Motion, the district court litigation concerned a prime bank scheme arising out of real estate loan programs in which investors were defrauded of at least \$5 million.

¹ Notwithstanding the provision in Rule 154(b) of the Commission’s Rules of Practice that reply briefs be filed within three days of service of an opposition to a motion, the April 27 Order sets a specific deadline of June 8, 2023 for the Division to file this Reply.

The district court granted the Commission's motion for summary judgment against Vetter on August 15, 2019, and subsequently entered judgment against him, which included permanent injunctions against future violations of Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act"), Section 17(a) of the Securities Act of 1933, and Section 10(b) and Rule 10b-5 of the Exchange Act, and an order to pay disgorgement and prejudgment interest of \$163,098, and a third-tier civil penalty of \$163,098. (*See* Motion, at Ex. 3, District Court's Memorandum Opinion on Summary Judgment; Ex. 4, District Court's Amended Final Judgment.) Vetter subsequently filed an appeal, but the Fourth Circuit affirmed the district court's judgment. (*See* Motion, at Ex. 5, Judgment of the U.S. Court of Appeals for the Fourth Circuit).

As this procedural history makes clear, Vetter already had a full and fair opportunity to litigate the issues surrounding his involvement in the prime bank scheme. He also had a second full and fair opportunity to raise any errors he perceived in the judgment with the Fourth Circuit. And not once, but twice, his arguments were rejected.

Now, for the third time, Vetter attempts to re-litigate in this administrative proceeding issues that already have been litigated. As set forth in the Motion and summarized below, however, this proceeding is not a proper venue for him to get yet another bite at the apple. Instead, the sole issue here concerns the appropriate sanction to be levied against him under Section 15(b) of the Exchange Act. And for the reasons set forth in the Motion, the Commission should impose an associational bar and a penny stock bar against him.

II. Summary Disposition is Appropriate in this Proceeding

In his Opposition to the Motion, Vetter ignores the Commission's directive in the April 27 Order that his brief "should precisely specify the basis for his opposition, identify with particularity the material factual issues in dispute, and address relevant Commission precedent." Instead, he

repeats baseless arguments from his Answer to the OIP and attempts to re-litigate matters that already were decided adversely against him both by the district court and by the Fourth Circuit.

The Commission has held, however, that “[f]ollow-on proceedings are not an appropriate forum to revisit the factual basis for, or legal challenges to, an order issued by a federal court, and *challenges to such orders do not present genuine issues of material fact in our follow-on proceedings.*” *John W. Lawton*, Investment Adviser Act Rel. No. 3513, 2012 WL 6208750, at *5 (Dec. 13, 2012) (emphasis added). The Commission also has held that:

It is well established that [the respondent] is collaterally estopped from challenging in this administrative proceeding the decisions of the district court in the injunctive proceeding. The doctrine of collateral estoppel precludes the Commission from reconsidering the injunction as well as factual and procedural issues that were actually litigated and necessary to the court’s decision to issue the injunction. The appropriate forum for [the respondent’s] challenge to the validity of the injunction and the district court’s evidentiary rulings is through an appeal to the United States Court of Appeals

James E. Franklin, Exchange Act Rel. No. 56649, 2007 WL 2974200, at *4 (Oct. 12, 2007). Here, Vetter had a full and fair opportunity to litigate the issues surrounding his involvement in the prime bank scheme in the district court. The district court considered the evidence presented on summary judgment and ruled against him. Vetter then had a second opportunity to raise the matters on appeal. And once again, the Fourth Circuit decided against him.²

Instead, the Commission repeatedly has upheld the use of summary disposition in cases such as this, where the respondent has been enjoined and the sole determination concerns the appropriate sanction. *See, e.g., Gary M. Kornman*, Exchange Act Rel. No. 59403, 2009 WL 367635, at *10 &

² As with the respondent in *James E. Franklin*, Vetter too raises arguments concerning the Division’s conduct during the district court litigation. Aside from the fact that the district court already rejected those arguments (*see* Motion, Ex. 3, at 17), the Commission itself has noted that an administrative proceeding is “not the appropriate forum for challenging the propriety of the Division’s conduct in the injunctive action; such a challenge should have been brought before the district court and, if necessary, appealed.” *James E. Franklin*, 2007 WL 2974200, at *4.

n.58 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010) (collecting cases). Under Commission precedent, the circumstances in which it is not appropriate to grant summary disposition in a follow-on proceeding involving fraud “will be rare.” *Efim Aksanov*, Initial Dec. Rel. No. 1000, 2016 WL 1444454, at *2 (Apr. 12, 2016) (citing *John S. Brownson*, Exchange Act Rel. No. 46161 (July 3, 2002), 55 S.E.C. 1023, 1028 n.12, *pet. denied*, 66 F. App’x 687 (9th Cir. 2003)).

As discussed at length in the Motion, the requirements for imposition of an associational bar and a penny stock bar are met here. Vetter has been enjoined by a district court in a litigated context; that judgment has been upheld on appeal; the requested sanctions are in the public interest; and Vetter offers no valid basis in his Opposition why the sanctions should not be imposed. There need be no further inquiry in this proceeding or any further delay.

Accordingly, the Division respectfully requests the Commission grant the Motion for Summary Disposition, and impose an associational bar and penny stock bar against Vetter under Section 15(b) of the Exchange Act.

DATED: June 1, 2023

By: /s/ Patrick R. Costello

Patrick R. Costello

Matthew B. Reisig

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CERTIFICATE OF SERVICE

I certify that on June 1, 2023, I caused to be served the foregoing DIVISION OF ENFORCEMENT'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION on the following persons in the manner indicated:

By Electronic Mail and U.S. mail:

Thomas H. Vetter



/s/ Patrick R. Costello

Patrick R. Costello