

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21001

In the Matter of

MATTHEW J. SKINNER

Respondent.

**DECLARATION OF LYNN M. DEAN IN SUPPORT OF DIVISION
OF ENFORCEMENT'S MOTION FOR ENTRY OF
DEFAULT JUDGMENT AND REMEDIAL SANCTIONS**

I, Lynn M. Dean, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am an attorney at law admitted to practice law in the State of California and before the United States District Court for the Central District of California. I am employed as an attorney in the Los Angeles Regional Office of the U.S. Securities and Exchange Commission (“SEC”), and am counsel for the Division of Enforcement in this case. I have personal knowledge or knowledge based upon my review of the file of the facts set forth in this Declaration and, if called and sworn as a witness, could and would competently testify thereto.

2. These proceedings were commenced on August 25, 2022 based upon the entry of a final judgment against Matthew J. Skinner (“Skinner” or “Respondent”), permanently enjoining him from future violations of Sections 5 and 17(a) of the Securities Act of 1933 (“Securities Act”), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 15(a) of the Exchange Act, in the civil action entitled *Securities and Exchange Commission v. Matthew J. Skinner, et al.*, Civil Action Number 2:21-cv-05273-SB-KS, in the United States District Court for the Central District of California. Exch. Act. Rel. 95608 (Aug. 25, 2022). Pursuant to SEC Rule of Practice 141(a)(2)(iii), the Order Instituting Proceedings (“OIP”) was served on Respondent on September 3, 2022. Respondent’s Answer was therefore due no later than September 23, 2022. Respondent did not appear or respond to the OIP. A true and correct copy of the OIP is attached hereto as Exhibit 1.

3. On April 5, 2023, the Commission issued an Order to Show Cause ordering Skinner, by May 22, 2023, to show cause why he should not be deemed to be in default and why this proceeding should not be determined against him due to his failure to file an answer and to otherwise defend this proceeding. Order, Exch. Act. Rel. No. 97253 (Apr. 5, 2023). The Order further directed that if Skinner failed to file a response, the Division should file a motion for default and other relief. Skinner did not appear or respond to the OSC. A true and correct copy of the OSC is attached hereto as Exhibit 2.

4. A true and correct copy of the Minute Order granting summary judgment in n the

civil action entitled *Securities and Exchange Commission v. Matthew J. Skinner, et al.*, Civil Action Number 2:21-cv-05273-SB-KS, is attached hereto as Exhibit 3.

5. On June 1, 2022, Respondent pled guilty to a single criminal count of wire fraud in connection with the Simple Growth LLC offering in a parallel criminal proceeding, *United States v. Skinner*, Case No. 2:22-cr-00183 (C.D. Cal. June 1, 2022). A true and correct copy of the June 1, 2022 Minute Order documenting Skinner's plea is attached hereto as Exhibit 4. A true and correct copy of the May 3, 2022 Criminal Information is attached hereto as Exhibit 5. Skinner is currently incarcerated.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 26th day of July, 2023 in Los Angeles, California.

A large black rectangular redaction box covering the signature area.

Lynn M. Dean

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. FACTS 2

 A. Respondent..... 2

 B. Entry of the Injunction 3

 C. Skinner is in Default 3

III. ARGUMENT 4

 A. Skinner Is In Default and the Allegations of the OIP May Be Deemed To Be True 4

 B. The Findings in the Underlying Case Are Binding on Respondent..... 5

 C. Imposition of a Permanent Bar Is Warranted 5

 D. At the Time of the Misconduct, Respondent was Acting as An Unregistered Broker and Was Associated With an Unregistered Broker 6

 E. The District Court Enjoined Skinner Against Violations of the Securities Laws... 7

 F. A Bar Is In the Public Interest..... 7

 1. Respondent’s violations were egregious, intentional and recurrent 8

 2. The remaining Steadman factors also favor a permanent bar 8

IV. CONCLUSION..... 9

TABLE OF AUTHORITIES

Cases

<i>Delsa U. Thomas and The D. Christopher Capital Management Group, LLC</i> , Initial Dec. Rel. No. 205, 2014 SEC LEXIS 4181 (Nov. 4, 2014).....	8
<i>Hector J. Garcia</i> , Exch. Act Rel. No. 54116, (July 10, 2006).....	7
<i>In the Matter of Gunderson</i> , Exchange Act Release No. 61234, 2009 SEC LEXIS 4322 (Dec. 23, 2009).....	5
<i>James E. Franklin</i> , Exchange Act Rel. No. 56649 (Oct. 12, 2007), 91 S.E.C. Docket 2708, 2713, 2007 WL 2974200, <i>petition for review denied</i> , 285 F. App'x 761 (D.C. Cir. 2008)	5
<i>James Joseph Conway</i> , Exch. Act Rel. No. 53722 (Apr. 25, 2006)	7
<i>Jonathan D. Havey</i> , CPA, Initial Dec. Rel. No. 959, 2016 SEC LEXIS 522 (Feb. 11, 2016)	8
<i>Lonny S. Bernath</i> , Initial Dec. Rel. No. 993 at 4, 2016 SEC LEXIS 1222 (Apr. 4, 2016).....	7
<i>Michael V. Lipkin and Joshua Shainberg</i> , Init. Dec. Rel. No. 317, 88 SEC Docket 2346, 2006 WL 2422652, (Aug. 21, 2006), <i>notice of finality</i> , 88 S.E.C. Docket 2872, 2006 WL 2668516 (Sept. 15, 2006) 8	
<i>Peter J. Eichler, Jr.</i> , Initial Dec. Rel. No. 1032, 2016 WL 4035559 (July 8, 2016).....	5
<i>Robert Burton</i> , Initial Dec. Rel. No. 1014, 2016 WL 3030850 (May 27, 2016).....	5
<i>Siming Yang</i> , Initial Dec. Rel. No. 788, 2015 SEC LEXIS 1735 (May 6, 2015)	8
<i>Steadman v. SEC</i> , 603 F.2d 1126 (5th Cir. 1979), <i>aff'd on other grounds</i> , 450 U.S. 81 (1981).....	7, 8, 9
<i>Terrence O'Donnell</i> , Initial Dec. Rel. No. 334, 2007 SEC LEXIS 2148 (Sept. 20, 2007).....	8

FEDERAL STATUTES

Securities Exchange Act of 1934

Section 10(b) [15 U.S.C. Section 78j(b).....	1, 3, 7
---	---------

Section 15(a)	
[15 U.S.C. Section 78o(a)].....	1, 3, 6, 7
Section 15(b)(4)(C)	
[15 U.S.C. Section 78o(b)(4)(C)]	6, 7
Section 15(b)(6)	
[15 U.S.C. Section 78o(b)(6)]	5, 6, 7

Securities Act of 1933

Section 5	
[15 U.S.C. Section 77e]	1, 3, 7
Section 17(a)	
[15 U.S.C. Section 77q(a)].....	1, 3, 7

COMMISSION RULES OF PRACTICE

Rule 141(a)(2)(iii)	
[17 C.F.R. § 201.141(a)(2)(iii)]	1
Rule 155(a)	
[17 C.F.R. § 201.155(a)].....	4
Rule 155(a)(2)	
[17 C.F.R. § 201.155(a)(2)]	1
Rule 220(f)	
[17 C.F. R. § 201.220(f)]	1

Pursuant to the August 25, 2022 Order to Show Cause in this matter, Exch. Act Release No. 97253 (Apr. 25, 2023), the Division of Enforcement (“Division”) submits this motion for default judgment and sanctions against Respondent Matthew J. Skinner (“Skinner” or “Respondent”).

I. INTRODUCTION

Respondent was the 100% owner and manager of Empire West Equity, Inc., a real estate investment firm, and he controlled four entities created to offer four real estate investment projects: Longacre Estates, L.P., Bayside Equity, L.P., Freedom Equity Fund, LLC, and Simple Growth, LLC. For a portion of the time in which he engaged in the conduct underlying the complaint described below, Respondent sold unregistered securities and acted as a broker without being registered as a broker or associated with a registered broker-dealer.

The instant proceeding was commenced on August 25, 2022 based upon the entry of a final judgment against Skinner, permanently enjoining him from future violations of Sections 5 and 17(a) of the Securities Act of 1933 (“Securities Act”), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 15(a) of the Exchange Act, in the civil action entitled *Securities and Exchange Commission v. Matthew J. Skinner, et al.*, Civil Action Number 2:21-cv-05273-SB-KS, in the United States District Court for the Central District of California. Exch. Act. Rel. 95608 (Aug. 25, 2022).

Pursuant to SEC Rule of Practice 141(a)(2)(iii), the Order Instituting Proceedings (“OIP”) was served on Respondent on September 3, 2022. Respondent’s Answer was therefore due no later than September 23, 2022. Skinner did not file an answer, and thus is in default. Accordingly, the Division moves, pursuant to Rules 155(a)(2) and 220(f) of the SEC’s Rules of Practice, for a finding that Skinner is in default and for the imposition of remedial sanctions. The Division specifically requests that the Commission issue an order barring Skinner 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.

II. FACTS

A. Respondent

Respondent is 48 years old. From at least 2015 to 2020, Respondent was the 100% owner and manager of Empire West Equity, Inc., a real estate investment firm, and he controlled four entities created to offer four real estate investment projects: Longacre Estates, L.P., Bayside Equity, L.P., Freedom Equity Fund, LLC, and Simple Growth, LLC. Declaration of Lynn M. Dean (“Dean Decl.”), Ex. 1 (OIP at ¶ A.1).

The Commission’s complaint alleged that between 2015 and 2020, Respondent and entities he controlled raised over \$9 million from over 100 investors through general solicitation, for four real estate investment projects. *Id.* at ¶ B.3. Skinner misappropriated substantial amounts of investor money from each offering to sustain his personal lifestyle, including leasing an Aston Martin and a Maserati, and to finance his marketing and fundraising efforts. *Id.* In addition, Skinner made multiple false statements to investors to conceal his fraudulent conduct, including blaming the economic impact of the COVID-19 pandemic for the failure to make payments. *Id.* Respondent also sold unregistered securities and acted as an unregistered broker. *Id.*

In the Longacre Estates, L.P. offering, Respondent raised \$2.4 million by representing to investors that their money would be used to purchase and develop certain residential lots, but Respondent instead diverted \$1.2 million from the project for marketing costs, his personal expenses, and a different real estate project. *Id.* at ¶ B.4.

In the Bayside Equity, L.P. offering, Respondent raised \$3.1 million by representing to investors that they would receive an interest in a waterfront development, but Respondent misrepresented the extent of his interest in the development, falsely inflated projected returns, and misappropriated \$1.1 million of investor funds raised, including to pay Respondent’s personal expenses. *Id.*

In the Freedom Equity Fund, LLC offering, Respondent raised over \$2.6 million to develop an apartment building property, but misappropriated \$1.1 million while failing to pay back \$800,000 in principal to investors. *Id.*

Finally, in the Simple Growth, LLC offering, Respondent raised more than \$1.3 million by telling investors he would invest their funds in multifamily real estate with guaranteed double-digit returns, but Respondent instead spent investor funds on personal expenses and Ponzi-like payments. *Id.*

B. Entry of the Injunction and Criminal Conviction

On June 17, 2022, a final judgment was entered by summary judgment against Respondent, permanently enjoining him from future violations of Sections 5 and 17(a) of the Securities Act of 1933 (“Securities Act”), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 15(a) of the Exchange Act, in the civil action entitled *Securities and Exchange Commission v. Matthew J. Skinner, et al.*, Civil Action Number 2:21-cv-05273-SB-KS, in the United States District Court for the Central District of California. Dean Decl., Ex. 1 (OIP. at B.2).

On June 1, 2022, Respondent pled guilty to a single criminal count of wire fraud in connection with the Simple Growth LLC offering in a parallel criminal proceeding, *United States v. Skinner*, Case No. 2:22-cr-00183 (C.D. Cal. June 1, 2022). Dean Decl. Exs. 4, 5. He is currently incarcerated. Dean Decl., ¶ 5.

C. Skinner is in Default

These proceedings were commenced on August 25, 2019. Exch. Act Rel. No. 95608. The Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“OIP”) was served on Respondent on September 3, 2022, by U.S. Postal Service certified mail, in accordance with Commission Rule of Practice 141(a)(2). Dean Decl., ¶ 2; Ex. 2. Respondent’s Answer was therefore due no later than September 23, 2022. *Id.* ¶ 2. Skinner failed to respond to the OIP.

On April 5, 2023, the Commission issued an Order to Show Cause ordering Skinner, by May 22, 2023, to show cause why he should not be deemed to be in default and why this proceeding should not be determined against him due to his failure to file an answer and to otherwise defend this proceeding. Order, Exch. Act. Rel. No. 97253 (Apr. 5, 2023). The Order further directed that if Skinner failed to file a response, the Division should file a motion for default and other relief. *Id.* Skinner did not appear or respond to the OSC. Dean Decl. ¶ 3.

III. ARGUMENT

A. Skinner Is In Default and the Allegations of the OIP May Be Deemed To Be True

Because Skinner has not responded to the OIP, he is in default. Rule 155(a) of the SEC’s Rules of Practice states:

A party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against the party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails: . . .

(2) To answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding

17 CFR § 201.155(a). Moreover, the OIP itself provides: “If Respondent fails to file the directed answer the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true” Dean Decl. Ex. 1 (OIP at p. 3).

The Commission has already made findings that Skinner was properly served with the OIP and failed to answer. *See* Dean Decl. Ex. 2 (Order to Show Cause, Exch. Act. Rel. No. 97253 (Apr. 5, 2023)). Under Rule 155(a), the allegations of the OIP may thus be deemed to be true and the Commission may determine the proceedings against the party upon consideration of the record, including the OIP. 17 CFR § 201.155(a).

B. The Findings in the Underlying Case Are Binding on Respondent

Where, as here, facts have been litigated and determined in an earlier judicial proceeding, those facts may not be revisited in a subsequent administrative proceeding. *See Peter J. Eichler, Jr.*, Initial Dec. Rel. No. 1032, 2016 WL 4035559 (July 8, 2016) (“It is well-established that the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent, whether resolved by summary judgment, by consent, or after a trial”) (collecting cases); *accord Robert Burton*, Initial Dec. Rel. No. 1014, 2016 WL 3030850 (May 27, 2016); *James E. Franklin*, Exchange Act Rel. No. 56649 (Oct. 12, 2007), 91 S.E.C. Docket 2708, 2713 & n.13, 2007 WL 2974200, *petition for review denied*, 285 F. App’x 761 (D.C. Cir. 2008); *In the Matter of Gunderson*, Exchange Act Release No. 61234, 2009 SEC LEXIS 4322 *15-16 (Dec. 23, 2009).

C. Imposition of a Permanent Bar Is Warranted

Based on the record here and in the underlying action, the Division respectfully requests that sanctions be imposed under Section 15(b)(6) of the Exchange Act. That section provides in relevant part:

With respect to any person who is associated, . . . or, at the time of the alleged misconduct, who was associated . . . with a broker or dealer, . . . the Commission, by order, shall censure, place limitations on the activities or functions of such a 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 an opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person – . . .

- (iii) is enjoined from any action, conduct or practice specified in subparagraph (C) of such paragraph (4)” of Section 15(b).

Thus, Section 15(b)(6) authorizes the Commission to impose an associational bar against a respondent if: (1) at the time of the alleged misconduct, he was associated with a broker; (2) he is enjoined from any action, conduct or practice specified in Section 15(b)(4)(C); and (3) a bar is in the public interest.

D. At the Time of the Misconduct, Respondent was Acting as An Unregistered Broker and Was Associated With an Unregistered Broker

Each of these factors is easily met here. First, the district court found that at the time of the misconduct here Respondent was acting as an unregistered broker:

The record demonstrates that Skinner was acting as a broker. He was involved in negotiations with investors and sold them securities. He personally solicited investors for all four companies, purchased lists of potential investors, instructed his sales representatives to solicit investments through cold calls, wrote and approved the scripts used for those calls, and paid his employees a sales commission. Skinner never registered as a broker with the SEC, nor was he ever associated with any registered broker. And he used instrumentalities of interstate commerce, including telephone calls, email, and the internet, to affect his securities transactions. Accordingly, the SEC has established that Skinner violated § 15(a) and it is therefore entitled to summary judgment on liability.

Dean Decl. Ex. 3 (summary judgment order, pp. 10-11 (internal citations omitted)). Based on that evidence, the Court concluded that enjoined him from future violations of Section 15(a) of the Exchange Act. *Id.* As previously discussed, Respondent is bound by the district court’s finding here. Administrative proceedings for sanctions against unregistered broker dealers are properly

instituted under Section 15(b)(6), and the Commission regularly issues bars against unregistered brokers pursuant to that section. *See, e.g., Hector J. Garcia*, Exch. Act Rel. No. 54116, (July 10, 2006); *James Joseph Conway*, Exch. Act Rel. No. 53722 (Apr. 25, 2006).

E. The District Court Enjoined Skinner Against Violations of the Securities Laws

The second element under Section 15(b)(6) is also established by the record in the underlying action because Respondent was enjoined from conduct specified in Section 15(b)(4)(C). The acts enumerated under Section 15(b)(4)(D) include willful violations of the Securities Act, the Exchange Act or any rules or regulations under such statutes. Here, the district court permanently enjoined Respondent from violating Sections 5 and 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 15(a) of the Exchange Act. Dean Decl., Ex. 3, p. 11.

F. A Bar Is In the Public Interest

Finally, the record establishes that a bar is in the public interest. In determining whether an administrative sanction is in the public interest, the Commission considers a number of factors, including (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (3) the sincerity of the respondent's assurances against future violations; (4) recognition of wrongful conduct; and (5) the likelihood that the respondent's occupation will present future opportunities for violations. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 81 (1981); *Lonny S. Bernath*, Initial Dec. Rel. No. 993 at 4, 2016 SEC LEXIS 1222 *10-11 (Apr. 4, 2016) (*Steadman* factors used to determine whether a bar is in the public interest). The district court found that all of these factors weighed in favor a permanent injunction. Dean Decl. Ex. 3 at p. 14.

As to whether a permanent bar is appropriate in a follow-on proceeding, "[t]he existence of an injunction can, in the first instance, indicate the appropriateness in the public interest of a suspension or bar from participation in the securities industry." *Michael V. Lipkin and Joshua*

Shainberg, Init. Dec. Rel. No. 317, 88 SEC Docket 2346, 2006 WL 2422652, at *4 (Aug. 21, 2006), *notice of finality*, 88 S.E.C. Docket 2872, 2006 WL 2668516 (Sept. 15, 2006).

1. Respondent’s violations were egregious, intentional and recurrent

As previously noted, in the underlying district court action, the Court found that Skinner violated the law and “knowingly made false representations to investors and used investor money to fund Empire West operational costs and his personal lifestyle.” His violations “were egregious, occurred repeatedly over several years, and resulted in substantial loss to investors, many of whom are unaccredited.” Dean Decl. Ex. 3, at p. 17. In sum, the egregiousness and extent of Respondent’s fraud clearly favor a permanent bar under *Steadman*.

2. The remaining Steadman factors also favor a permanent bar

The remaining Steadman factors also favor a permanent bar. To begin, Respondent has failed to appear and provide any assurance against future violations and he lacks any apparent recognition of his wrongful conduct. The “absence of recognition by [a respondent] of the wrongful nature of his conduct” favors a permanent bar. *Jonathan D. Havey, CPA*, Initial Dec. Rel. No. 959, 2016 SEC LEXIS 522, at *11 (Feb. 11, 2016) (granting permanent bar on motion for summary disposition in follow-on proceeding to criminal conviction); *Siming Yang*, Initial Dec. Rel. No. 788, 2015 SEC LEXIS 1735, at *10 (May 6, 2015) (noting, as part of grant of summary disposition and imposing of permanent bar in follow on proceeding to civil injunction, that, “[c]onsistent with a vigorous defense of the charges, [respondent] ha[d] not recognized the wrongful nature of his conduct”); *Delsa U. Thomas and The D. Christopher Capital Management Group, LLC*, Initial Dec. Rel. No. 205, 2014 SEC LEXIS 4181, at 24 (Nov. 4, 2014) (imposing permanent bar and revoking adviser’s registration on summary disposition following civil fraud injunction, noting that “Respondents do not recognize the wrongful nature of their conduct. Instead, they deny any culpability, insist that none of their conduct was inappropriate, and accuse the Commission and the Commission’s witnesses of bias or lying”); *Terrence O’Donnell*, Initial Dec. Rel. No. 334, 2007 SEC LEXIS 2148, at *14 (Sept. 20, 2007) (weighing in favor of bar

respondent's "protest" that the securities laws were not sufficiently clear, finding this "evidence that [respondent] still seeks to minimize his misconduct"); *Steadman*, 603 F.2d at 1140.

In enjoining Skinner, the district court found that he:

acted with a high degree of scienter, [and] knew [he was] misappropriating investor funds and making material representations to investors. Second, this was not an isolated incident; these violations occurred repeatedly, over the course of five years, through Skinner's use of five different companies to perpetuate his fraudulent scheme. As to the third factor, while Skinner has pleaded guilty to securities fraud in connection with Simple Growth, he has not recognized the wrongful nature of his conduct with respect to Longacre, Bayside, or Freedom Fund.

Dean Decl. Ex. 3 at p. 14. Finally, the court noted that "Skinner appears to have no occupation beyond soliciting real estate investments, which suggests a risk of future violations, and he has not provided any assurances against future violations." *Id.*

In short, all of the *Steadman* factors favor the imposition of the bar, which is strongly in the public's interest.

IV. CONCLUSION

For the foregoing reasons, the Division respectfully requests that Respondent be barred 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.

Dated: July 26, 2023

Respectfully submitted,



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